SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 723

Petition not printed other parts of brief not orig. in record

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KURT G. W. LUDECKE,

Petitioner,

vs.

W. FRANK WATKINS, AS DISTRICT DIRECTOR OF IMMIGRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER

KURT G. W. LUDECKE,
Pro se.

INDEX

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Attorney In Person

To the Honorable Fred M. Vinson, Chief Justice of the Supreme Court of the United States and Associate Justices of the Supreme Court of the United States:

Your petitioner, Kurt G. W. Ludecke, attorney in person, respectfully submits that, for the reasons set forth below, the judgment of the Circuit Court of Appeals for the

Second Circuit, entered July 24, 1947 (R. 45) [1] should be reversed and the cause remanded to the District Court of the United States for the Southern District of New York.

In view of the almost unsurmountable difficulties, discouraging complications, and at times unbearable conditions in the disturbing and unhealthy milieu at Ellis Island, under which Petitioner had to prepare his Petition for Writ of Certiorari and Brief in support thereof; in view of his low vitality because of physical exhaustion in which he had to edit, revise, and rearrange said Petition and supporting Brief for the present Brief for Petitioner after his arrival in Washington when learning on April 8 that his petition for writ of certiorari was granted on April 5; and finally, in view of the pressure of time and necessity of improvising practically everything and all that implies as stated in his letter of April 16 to Mr. H. B. Willey, Deputy Clerk, for presentation to the Court;—in due consideration of all this, it should be emphasized and expressly put on record that the unusual problems and situations coming up in the course of this unusual, nay, unprecedented legal struggle, had to be dealt with in an unusual way, wherefore Petitioner further prays that this Brief will not be disregarded for any defect of arrangement and form.

Opinions and Judgment Below

The two opinions of the District Court for the Southern District of New York were entered November 6, 1946 (R. 16-26), and January 2, 1947 (R. 27-30). Judgment was entered January 10, 1947 (R. 31). The opinion and judgment of the Circuit Court of Appeals for the Second Circuit were entered July 24, 1947 (R. 35-39).

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[1] Bracketed R. with figures appearing in this petition refers to pages of the printed Transcript of Record.

Jurisdiction

The jurisdiction of this Court is invoked under Section 5 (a & b) of Rule 38 of the Rules of this Court and under Article III, Section 2 (1), of the Constitution of the United States. The petition for a writ of certiorari was filed in October, 1947, and the order denying certiorari entered January 12, 1948, was vacated and said petition granted on April 5, 1948.

Statement of Case

History

Petitioner was born in Germany, on February 5, 1890. In 1927, he emigrated to the United States and became a legally admitted resident on August 4, 1927. Three days *before* there was a "declared war" between the United States and Germany, that is, on December 8, 1941, petitioner was arrested and later interned as a "potentially dangerous alien enemy" for the duration of the war. On May 7, 1946, he received an Order of removal, dated January 18, 1946, and signed by the Attorney General (R. 3). On October 14, 1946, petitioner sued out a writ of habeas corpus (R. 1) to which a return was filed on October 28, 1946 (R. 2). After a hearing on October 29 the Court rendered his opinion on November 6, 1946 (R. 16-26), dismissing the writ. The Honorable Vincent L. Leibell, U. S. D. J., in his letter of November 19, 1946, addressed to petitioner, and again in Court on November 20th when the Order was presented for settlement and signature, "suggested to the petitioner that he have a lawyer take care of the appeal and . . . assigned Mr. Henry K. Chapman, an attorney experienced in Federal practice, to advise the petitioner. Later [said judge] informed Mr. Chapman that if he or the petitioner wished to have the hearing reopened for the purpose of

offering additional evidence [the judge] would give consideration to any such request" (R. 27). The request was made and a rehearing granted, which took place on December 27, 1946. The Court rendered his second opinion on January 2, 1947 (R. 27-30), again dismissing the writ. After the Order of dismissal (R. 31) was entered on January 10th, 1947, a notice of appeal was filed on January 21, 1947 (R. 32). Because of a definite disagreement between petitioner and Mr. Chapman anent fundamentals and procedure, petitioner decided to again proceed *pro se*, and on March 10th an Order of the Appellate Court relieved Mr. Chapman of his assignment as counsel for the petitioner. The instant case was argued on June 11, 1947, Opinion (R. 35-37) rendered and Judgment (R. 38-39) affirming Judge Leibell's Order filed July 24, 1947.

It must be emphasized at this point, that Judge Leibell in his Opinion of November 6 (R. 19) mentions only 5 of the 13 papers submitted at the first hearing and refers to and quotes from only one of these, namely "the so-called report of the petitioner" (R. 19), and again in his Opinion of January 2 quotes—in paraphrased form or verbatim—only certain parts of the papers submitted at the second hearing, thus using throughout that obsolute weapon of controversy, the excerpt lifter. Moreover, a comparison of the lifted excerpts in said Opinion of November 6 with the full text of the Report of the petitioner (R. 7-15) shows that even the way these quotations are arranged is not the proper way. For instance, the arrangement of quotations on page 23 of the Record gives the impression that here the complete text of that part of the original is quoted, whereas actually two and a half pages are not quoted. (The importance of this point will become clearer later on.)

Therefore, petitioner wished to submit to the Appellate Court the full text of at least the most important papers, so

that the Court would have all the information needed to reach a just decision. However, till then unfamiliar with the Rules of the United States Circuit Court of Appeals for the Second Circuit, Petitioner asked Mr. Chapman who at the time still acting as his assigned attorney wrote on February 26 that I "prepare six (6) copies of the following papers which will constitute the record on appeal . . . to be filed by March 10, 1947; . . . . 1. Petition for Writ of Habeas Corpus. 2. Return by the Director of Immigration and Naturalization. 3. Both opinions of Judge Leibell. 4. In as condensed form as you can make it, your statements which were considered as testimony by Judge Leibell. We are proceeding on the applicability of Section 23 of Title 50 to your case." That—after writing me on January 3, 1947, that "under the circumstances, whether the hearing accorded you was fair or unfair it was *only an act of grace and mere surplusage.*" (Italics are petitioner's.) Though layman in court matters Petitioner sensed that there was something wrong and (after being relieved of Mr. Chapman as mentioned above and after certification of the Transcript of Record by the Clerk of the District Court) accompanied by an Ellis Island guard and Mr. William J. Sexton, Assistant United States Attorney, for Respondent-Appellee, presented the said certified Record together with his Brief for filing to the Clerk of the Appellate Court—that is, the Brief of twenty-two pages with an Appendix, the two amounting in toto to 98 pages. Learning that the Clerk would not receive a Brief of more than fifty pages, Petitioner—as *prisoner not being a free agent* and all that implies, embarrassed by a very impatient opposing counsel, the aforementioned Mr. Sexton, the Record already certified and docketing fee paid, furthermore the necessary change meaning under the circumstances a most complicated business apart from the very little time left—weighed down with all these difficulties knew no better at the moment than

to trust in God and correct the error simply by removing the entire Appendix and by rectifying the Index by crossing out the indexed Appendix with footnote (A. 95)[2] and filing merely the Brief, which was done.

That may suffice to explain (1) why the typewritten certified Transcript of the Record is so incomplete, therefore does not give an honest and right picture of the case and of the situation; (2) why Petitioner asked the Appellate Court on June 11 before beginning his Oral Argument to be allowed to submit some additional papers which was granted; (3) why Petitioner later had the said additional papers certified together with some Exhibits for use in his petition (A. 126); and finally (4) why Petitioner now prays to be allowed to submit with this petition an Appendix containing the full text of the most relevant and significant papers submitted to Judge Leibell on October 29 and December 27, 1946, as well as of papers filed with or later submitted to the Appellate Court on June 11, 1947, and lastly a volume of the above mentioned Exhibits not appearing in the Record, so that this Honorable the Supreme Court of the United States may have all the information needed to reach a just and wise decision in this all important fundamental case.

Facts and Points

(1) Petitioner is restrained, detained and deprived of his liberty within the Southern District of New York of the United States District Court, to wit, at Ellis Island, New York Harbor, by the Respondent W. Frank Watkins, as District Director of Immigration etc., and his agents under color of authority of the United States.

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[2] Bracketed A with figures appearing in this Brief refers to pages of the typewritten Appendix to the printed Brief for Petitioner.

(2) Respondent is acting under orders from the Attorney General of the United States and bases his right to detain this Petitioner with the intention to deport him to Germany as an allegedly dangerous alien enemy solely upon he Alien Enemy Act of 1798 (Title 50, U. S. C. 21-24) and Presidential Proclamations thereunder.

(3) No warrant for the arrest of this Petitioner was ever issued by any Court, Judge or Justice of the United States of America; also, Petitioner was never accorded a hearing before any tribunal whatsoever to determine the question of whether or no- he was a dangerous resident alien enemy and whether or no- he had violated any of the Presidential regulations pertaining to alien enemies and under which any such alien would be subject to internment and deportation, wherein he was:

a. given any copy of the charge against him and appeared before a court or judge as provided in Sec. 23, Title 50, U.S.C.;

b. permitted to be represented by counsel, and either he or his counsel or both were permitted to cross-examine any and all witnesses against him;

c. permitted to produce evidence and witnesses to refute any charges and any testimony that might have been given against him.

Petitioner was not even given an administrative hearing, wherein the recognized indicia of a fair hearing were present, in spite of the fact there was no longer any danger of espionage or sabotage etc. warranting the suspension of civil rights of *resident* alien enemies, who were expressly given the right not merely to an administrative but to a judicial hearing under Section 23 aforesaid.

(4) This Petitioner is informed and believes and, therefore, charges the fact to be that the President of the United

States never did actually direct or authorize either the Attorney General of the United States or any other official including Respondent to imprison or deport Petitioner, but instead some employee of the Department of Justice apparently of the so-called Alien Enemy Control Unit, who is not known to Petitioner, has arbitrarily of his own initiative and without such authority determined, that Petitioner is a dangerous alien enemy, and is acting under color of the United States without authority to effect the deportation of Petitioner, and that the President of the United States in Proclamation No. 2655 authorized the Attorney General to deport only these enemy aliens whom the said Attorney General deemed to be dangerous from among those "alien enemies now or hereafter interned," "pursuant to the aforesaid Proclamations," and that the aforesaid Proclamations so referred to specify that the enemy aliens before being interned be given a judicial hearing as provided under Section 23, U. S. C., Title 50.

(5) Proclamation No. 2655 purporting to authorize the Attorney General to deport enemy aliens deemed to have been dangerous to the public peace and safety (without due process of law in spite of the said Section 23) is too broad and vague in that it authorizes the deportation of an enemy alien for adherence "to the principles of" a government with which the United States is in a state of a "declared war" and, therefore, partakes of the nature of thought police and is not only a violation of a resident enemy alien's freedom of speech but even of his freedom of thought.

(6) Neither the President of the United States nor any other officer of the government thereof has the power in time of peace or in war to order the removal from the United States or even imprisonment, restraint or detention under the Alien Enemy Act, when there is no longer any clear and present danger of espionage or sabotage etc., and

there has not been any such clear and present danger since Germany's unconditional surrender on May 8, 1945, and a resident German alien, such as Petitioner, has vested constitutional rights not only of freedom of speech but also of due process of law, whereby neither the President of the United States nor any officer of the government thereof has the power in time of peace or war to make such an order under the Alien Enemy Act unless a judicial hearing before a court or judge as provided in Section 23 has been awarded such a resident enemy alien, when the courts are open and available for that purpose, and there is no justification, by virtue of any clear and present danger, for summary action in contravention of such constitutional as well as inherent natural rights of due process of law under color of the said Alien Enemy Act and the delegation of power therein given to the executive branch of the government.

(7) Certain employees in the Department of Justice, that is, in the office of the Attorney General, who are not known to Petitioner, are subverting the intent and purpose of the Alien Enemy Act, which provided for the determination of the question of whether or not resident enemy aliens were dangerous to the peace and safety of the United States by a judicial hearing and according to due process of law and pursuant to the civil rights of such residents, and such employees are likewise subverting the intent and purpose of Presidential Proclamation No. 2655, which is limited to those enemy aliens already interned lawfully pursuant to previous Proclamations Nos. 2525-2526 which were intended merely to provide for the detention and restraint of enemy aliens pending a judicial hearing under Section 23, Title 50, U. S. C., to determine whether or no upon such judicial hearing they ought to be interned as dangerous to the public peace and safety, and are causing the Alien Enemy Act and the aforesaid Proclamations to be wrongfully applied to

Petitioner (and other German resident aliens), in order to bring about—under the cloak of legality—the illegal internment and deportation of a legally admitted law-abiding decent resident alien eligible for citizenship, that is, in violation of his unalienable inherent natural rights, as a member of the human race, and of his civil rights, as a resident, to due process of law.

(8) The GOVERNMENT,[3] represented by the President of the United States, represented by the Attorney General of the United States, represented by the Alien Control Unit of the Department of Justice, represented by the Acting Director of the Alien Control Unit of the Department of Justice, represented by the Immigration and Naturalization Service of the Department of Justice, represented by the Respondent, W. Frank Watkins, as District Director for the District of New York, represented either by the United States Attorney for the Southern District of New York, represented by Assistant United States Attorneys, or represented by the District Counsel of the New York District of Immigration and Naturalization Service, Department of Justice, represented by the Assistant to the District Counsel etc. etc., this mysterious GOVERNMENT—lost in a murky background—insists in ignoring the proverbial "unalienable rights" of every human being as well as the said Section 23 of the Alien Enemy Act and insists in holding that this Petitioner has no rights whatsoever, simply because he is a German alien enemy, therefore can be imprisoned at will, deemed dangerous at will, and be deported at will—without due process of law. Says the Return To Writ Of Habeas Corpus (R. 2):

> 1. The relator, Kurt G. W. Ludecke, is being held in custody as an alien enemy pursuant to the provisions of

[3] In Court, Petitioner observed, Ass. U. S. Attorneys when arguing his case and similar ones always used with emphasis the term "The Government holds that . . ."

Title 50, United States Code, Section 21, and the Proclamation of the President, No. 2526, dated December 8, 1941.

2. The relator is a native, citizen, denizen, or subject of Germany.

3. The relator was born in Berlin, Germany, on February 5, 1890.

4. The relator has been ordered removed from the United States by an order of the Attorney General dated January 18, 1946, pursuant to proclamation of the President, No. 2655, dated July 14, 1945.

(9) The Honorable Judge Leibell of the United States District Court for the Southern District of New York, however, in his Opinion of November 6, 1946, does "not agree with the Government's contention that the only question the Court may consider in this habeas corpus proceeding is the Petitioner's alien enemy status" (R. 24) and holds that "the Court should have the right . . . to inquire into the facts of each case so as to be satisfied that the issuance of the deportation does not involve an arbitrary and unjust use of war powers when actual hostilities have ceased" (R. 25). (It may be noted here in passing, that Judge Leibell apparently is the only one who stated his disagreement with the Government on that point, because to date—as far as Petitioner knows—other District Judges dealing with *habeas corpus* writs of German alien enemy residents accepted the Government's view in full and accordingly dismissed the writs outright, while the Appellate Courts affirmed their Orders as did the Circuit Court of Appeals for the Second Circuit in *Ex Rel. Schueter* v. *Watkins*.)

(10) After reaching the conclusion, that Petitioner did have "a fair hearing" and that "the evidence was substantial" (R. 26), said Judge dismissed the writ. In other words, Judge Leibell who in this *habeas corpus* proceeding

"considered the statements made by petitioner in the exhibits attached to his brief with the same force and effect as if he had testified to them before me at the hearing on the return of the writ" (R. 24), holds that *on the face of the record* Petitioner's deportation is a just and equitable act.

In view of the political aspect of hunting down the alien enemy huns, it is obvious why Judge Leibell wished to get back into line after realizing his faux pas and becoming aware of the vulnerability of his Opinion, which is as poorly written as it is conceived. He suggested[4] a rehearing, for the benefit of the Petitioner (1), of course, "if he wished to have the hearing reopened for the purpose of offering additional evidence" (R. 27), in reality, however, for the benefit of his honorable self, because a rehearing alone offered the sought for opportunity for a second Opinion, which would save his face and spare the Government from an *inconvenient* precedent. And the date of the rehearing was so timed, that the decision of the Appellate Court, which on "December 31, 1946, affirmed an order dismissing a similar writ in *Ex Rel. Schlueter* v. *Watkins*" (R. 29), could be used in his Opinion of January 2, 1947, as the *convenient* precedent—welcome to the Government. Needless to emphasize the fact, that Petitioner's writ was again dismissed with gusto in spite of Petitioner's convincing Statement (A. 65) and Argument (A. 71) offering the "addi-

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[4] See second paragraph of p. 27 of Record. In this connection, the fact is significant that the Court ordered minutes and even the transcript of these minutes of Judge Leibell's talk to and advice to Petitioner to take a lawyer, emphasizing again and again the excellence of the recommended lawyer, the said Mr. Chapman, insisting that Petitioner should trust this lawyer, cooperate with him, and follow his good advice. (1) Nota bene, Petitioner's appearance in Court on November 20, 1946, referred to above, was *not* a hearing or argument of any sort, also the fact, that of course minutes exist of Petitioner's second hearing on December 27, but that the Judge did not order the transcript of these minutes of this second so revealing hearing.

tional evidence" that would have convinced a fair tribunal at any time in any land.

(11) In happy contrast to Judge Leibell's singular performance, the three Circuit Judges—while still holding that the Attorney General's order "is not subject to judicial review" (R. 37)—unanimously declared that Petitioner's Brief (A. 94) and Oral Argument (A. 121) "have been interesting and moving" (R. 36), and that "on the face of the record it is hard to see why the relator should now be compelled to go back . . . and . . . suggest that justice may perhaps be better satisfied, if a reconsideration be given him in the light of the changed conditions, since the order of removal was made eighteen months ago" (R. 37).[5]

Though affirming his ORDER the three Circuit Judges, L. Hand, Swan and Augustus N. Hand, do *not* adopt Judge Leibell's OPINION, because they find that the Court has not the power to inquire into the facts of the instant ase determined by executive action, but that "on the 1_ce of the record" Petitioner's deportation would not be a just and equitable act, but on the contrary would be "an arbitrary and unjust use of war powers when actual hostilities have ceased" (R. 25)—for that is the real meaning of the courteous and cautious language adopted by the Honorable Circuit Court of Appeals. And more than that! It is practically, on the one hand, an intimation to the Department of Justice to release this Petitioner, and, on the other hand, an intimation to Petitioner if necessary to take his case before the Supreme Court for a final decision, because the Supreme Court of the United States has the power and

[5] It is significant that such a qualifying statement practically exonerating the Petitioner and revoking the negative conclusion of its own decision so far apparently is the only one made by any Court dealing with habeas corpus petitions of German alien enemies.

the right to inquire into the facts of a case determined by executive action.

(12) Judge Leibell declares in his Opinion of November 6, 1946, that

> "In a habeas corpus proceeding by an alien enemy . . . the District Court may not review the evidence on which the Attorney General based his order [of removal], for the purpose of determining whether or not the Attorney General's determination was correct. There is no doubt about the constitutionality of the statute or about the power of the President to issue Proclamation No. 2655. But the Court, in my opinion, may inquire to ascertain if the petitioner was accorded a fair hearing before ordered deported and whether there was some evidence having probative value to support the Attorney General's conclusion. Deportation is a severe penalty, involving great hardship. . . . I do not agree with the Government's contention that the only question the Court may consider in this habeas corpus proceeding is the petitioner's alien enemy status, although there are cases which give support to that view" (R. 24).

and that

> "In a habeas corpus proceeding such as this the Court should have the right to consider whether more than the formalities have been satisfied in the issue of an order for the deportation of an alien enemy. Assuming, arguendo, that the alien enemy had been peaceful and law abiding and in fact believed in our American institutions and has never since his arrival in this country adhered to the foreign enemy government or its principles, would the Courts be powerless to help him? The statement that it is highly improbable that such a case could ever arise, is no argument against the right of the Court to inquire into the facts of each case so as to be satisfied that the issuance of the deportation order does not involve an arbitrary and unjust use of

war powers when actual hostilities have ceased" (R. 25).

(13) It so happens, that actually "such a case" did arise, the "highly improbable" his Honor assumed, arguendo, namely that this Petitioner "had been peaceful and law abiding and in fact believed in our American institutions and has never since his arrival in this country adhered to the foreign enemy government or its principles", and that "the issuance of the deportation order" does indeed "involve an arbitrary and unjust use of war powers when actual hostilities have ceased." Therefore, Judge Leibell's question "would the Courts be powerless to help him" is a decisive question, which must be answered. His Honor's answer and the way he "helped" this Petitioner now is a matter of record. The three Circuit Judges avoided a direct answer by stating that they "see no reason for discussing the nature or weight of the evidence before the Repatriation Hearing Board, or the finding of the Attorney General for the reason that his order is not subject to judicial review" (R. 37). But the sentences following this last quotation contradict Judge Leibell and nullify the really damaging part of his Opinion as illustrated above on pages 11 and 12 of this text. That is why the Appellate Court's Opinion while negative also is so positive and so significant, therefore helping Petitioner indeed in allowing him the moral victory by conceding, that Petitioner "made an oral argument (A. 121) and submitted a brief (A. 94), both of which have been interesting and moving" (R. 36), and a factual victory by practically stating that "on the face of the record" this Petitioner did *not* have a "fair hearing" and that the evidence was *not* "substantial", thus suggesting that he should be released by administrative order. Apparently, the three Circuit Judges unanimously decided that that was the most they could do "to help him," because

they believed that they did not have the power to do more, and because they did not wish to effect his release by an Order of the Court, probably first, in view of the Appellate Court's own decision in *United States ex rel. Schlueter* v. *Watkins*, and second, because they did not wish to embarrass the Government. Petitioner's release by an Order of the Court would have created a decisive precedent, for it would mean the judicial recognition of the validity of the Bill of Rights for all men in time of peace and war, as well as the validity of the unalienable, inherent natural rights of every member of the human race in time of peace and war, and on the other hand, it would recognize the validity of Section 23 of Title 50 and thus condemn the "Government's" illegal procedure and untenable interpretation of the Alien Enemy Act of 1798. That is a matter for the Supreme Court to decide, the three Circuit Judges may have thought, should the "Government" insist on the deportation of this Petitioner.

(14) After declaring that "on the face of the record it is hard to see why the relator should now be compelled to go back" the Appellate Court says that "of course there may be much not disclosed to justify the step" (R. 37). A justifiably cautious, therefore proper remark. Hence it is important indeed to prove beyond doubt, firstly, that Petitioner did *not* have a "fair hearing" and, secondly, that the alleged evidence is not "substantial" to justify Petitioner's internment let alone his deportation; or, in other words, that he is not only *not* "dangerous to the public peace and safety of the United States" but, quite on the contrary, is a useful member of society striving for the Right Life as best he can and for many years already a true American at heart and in spirit, therefore eligible for citizenship (R. 1 and 6; A. 80, 83, 88, 90, 133-4).

It would appear, that the fact already is established that Petitioner did *not* have a fair hearing. The factual and cir-

cumstantial evidence submitted to the lower Courts, contained partly in the Transcript of the Record, partly in the Appendix annexed to this Petition, is clear, conclusive and convincing. Special attention deserves the affidavit of Mrs. Marion Bellamy Earnshaw, the daughter of Edward Bellamy, which Judge Leibell mentioned in his Opinion of January 2 (R. 28), but ignored. Said affidavit appears in full as Exhibit I in Petitioner's Argument (A. 78) submitted at his second hearing before Judge Leibell.

That leaves the question of the alleged evidence. The Order of removal speaks "of the evidence presented before the Alien Enemy Hearing Board on January 16, 1942, and before the Repatriation Hearing Board on December 17, 1945," (R. 3). The truth is, that no evidence whatever was presented or even suggested at the hearing on January 16, 1942, as clearly stated in Petitioner's letter of February 22, 1942, to Mr. Francis C. Biddle, then acting Attorney General, the essential parts of which are quoted in Petitioner's Statement of December 17, 1945 (A. 129).

As to the evidence allegedly presented before the Repatriation Hearing Board on December 17, 1945, Petitioner calls attention to his declaration made at the beginning of the said hearing (R. 7). Again it must be emphasized, that Petitioner never, that is, neither at the said hearings nor at any other time since his arrest on December 8, 1941, till this very day was told in definite terms of any specific charges as to his alleged potential and later actual dangerousness because of his alleged adherence to the Hitler Government or to the principle thereof, or was served with a properly written indictment specifying the charges, or was ever confronted with facts which were presented to him as "evidence" showing his dangerousness because of his alleged adherence to the Hitler Government "or to the principle thereof." (R. 3). It was not done and could not be done for the simple

reason, that there is no evidence on the ground of which an indictment with specific charges could be made, which would be accepted in any respectable court throughout the civilized world. At this point, in order to avoid misunderstanding, it should be noted that pure irony prompted Petitioner to use the terms "specified charges" and "evidence" in his so-called Report, for instance:

> "Here is what in the opinion of Mr. Ennis . . . presents the 'evidence' . . ." (R. first paragraph of p. 9) and
>
> "Before I proceed to deal with the above 'charges' and points of 'evidence' . . ." (R. second § of p. 8) and
>
> "already it is evident, that it is absurd to consider me 'dangerous' on the ground of above specified charges . . ." (R. third § of p. 8) and
>
> "Now, to return to the specific charges presented as 'evidence.'" (R. third § of p. 9).

The minutes of said hearing would show if produced, that it is a fact that not one of the points, for instance 1, 2, 3, 4, and 5 (R. 8), ironically spoken of in said Report as "specified charges" and "evidence," was presented as such and that all Petitioner could get out of the Board in lieu of specific charges and valid evidence was a shower of sham in form of incompetent, irrelevant, and immaterial questions and arguments and assertions meant to confuse and irritate the Petitioner, a sorry performance which my witness, Mrs. M[illegible]on B. Earnshaw, well observed and described in her affidavit already mentioned above. The fact of the absence of charges and evidence is also noted in Petitioner's Statement of December 11, 1946, for Judge Leibell (A. 67), and in his Statement of September 24, 1946 (A. 139).

In short, first, what Petitioner ironically labeled "charges" and "evidence" was neither, nor was it presented as such by the Board; second, it already is established as incompetent, irrelevant and immaterial, therefore

does not call for additional proof and comment. Hence, the evidence spoken of in the Order of removal does not exist, meaning that the Order is based on fraud. Or there are some trumped up charges never mentioned thus unknown to Petitioner, because they are based on false evidence fabricated by the said employees of the Department of Justice—obeying perhaps influences in—or outside—the Government—who induced the Attorney General to sign an infamous document, the removal Order of this Petitioner. Maybe even President Truman was induced in a similar way to sign the Presidential Proclamation No. 2655 on July 14, 1945, for the new President was absorbed just then with his imminent voyage to Potsdam and far too busy with more important things to have time to go into small matters such as the removal of some huns. And had not President Roosevelt signed the Proclamations Nos. 2525 and 2526 also dealing with alien enemies? Also, there are times when the greatest and most conscientious ruler has to trust his capable advisers.

Anyway, whether the removal Order with the alleged evidence results from pure fraud or from the fraudulent manipulations of dishonest public servants, or from the red tape, indifference and ill will of a cursed bureaucracy, will be known only if the Supreme Court in the course of a full examination or a Congressional Investigation Committee will issue an Order insisting on the production of the minutes of Petitioner's hearings as well as of papers and records involving this "alien enemy's" ordered arrest, detention, internment and removal.

In this connection, most revealing and significant is a letter mentioned and quoted in full in the Opinion of the Hon. Simon H. Rifkind, U. S. D. J., dated August 6, 1946, in *USA ex rel. Schlueter* v. *Watkins*. Said Judge states:

> "Relator's counsel asked for production of the Attorney General's file concerning the relator. Judge

Bright, on a motion made before trial, had ordered the production of the record of whatever hearing relator may have had. The United States Attorney refused to produce the record and instead submitted a letter from the Acting Attorney General which is set forth in the margin. 2)."

2) Office of the Attorney General

Washington, D. C.

May 29, 1946.

John F. X. McGohey, Esq.
United States Attorney
United States Court House
Foley Square
New York 7, New York

Attention: Stanley Lowell, Assistant U. S. Attorney

Dear Mr. McGohey:

I refer to your telephone conversation of May 29 in which you advised my office that by order of even date Judge Bright of the District Court of the United States for the Southern District of New York had ordered the production of records and papers of the Department in a habeas corpus proceeding involving an alien enemy ordered removed pursuant to the Alien Enemy Act of 1798.

Your attention is called to the provisions of Attorney General's Order #3229, dated May 2, 1939, which forbid disclosure of confidential documents of the Department in the absence of my authorization. All the files and documents relating to alien enemy proceedings, including those both of the Alien Enemy Control Unit and of the Immigration and Naturalization Service, fall within this category.

I understand that, in the instant case, relator's status as an alien enemy is conceded. In view of the clear line of authority holding that, in habeas corpus proceedings brought to test the propriety of action taken under the Alien Enemy Act of 1798 in time of war, the only sub-

ject into which the courts may properly inquire is whether in fact relator is an alien enemy, I do not feel warranted in authorizing the disclosure here in question.

You are authorized to show this letter to the court and to request that the order to produce records of this Department be vacated in so far as it affects those in the confidential category.

Please advise me at the earliest possible moment of any developments which may occur.

Sincerely

(S.) J. HOWARD MCGRATH
Acting Attorney General.

Indeed an easy way to dodge the issue! The implications of this priceless letter are too obvious to call for comment at this point. Suffice to say that Schlueter was suddenly released on March 26, 1947, almost three months after Judge Rifkind's Order dismissing his writ was affirmed. The mysterious Alien Control Unit of the Department of Justice, the working of which must be by now a mystery to the Department itself, had made the sudden discovery it seems with an acumen so peculiar to it, that Schlueter was not dangerous after all, that he was but a harmless delicatessen clerk—Lo and Behold! the very same Schlueter who had been so "dangerous to the public peace and safety of the United States" that he had to be ordered removed, whose file regarding the records involving his removal was so "confidential" that its production had to be refused!!!

(15) Here is another document which speaks for itself and, in a way, may serve as a supplement to the preceding point (14). It reads as follows:

DEPARTMENT OF JUSTICE
WAR DIVISION

NOTICE OF DETERMINATION OF REPATRIATION OF ALIEN ENEMY

To: Kurt G. W. Ludecke 146-13-2-37-89
Algiers, La.
39/3087

1. By proclamation of July 14, 1945, the President of the United States, acting under the authority of the Alien Enemy Act of 1798 (50 U.S.C. 21-24), has prescribed the following regulations, additional and supplemental to those prescribed by earlier proclamations:

"All alien enemies now or hereafter interned within the continental limits of the United States pursuant to the aforesaid proclamations of the President of the United States who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of government thereof shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as he may prescribe."

2. Pursuant to the above proclamation and based upon the evidence considered at your earlier alien enemy hearing or hearings, it has been determined that you should be removed and repatriated to the country of your nationality as soon as arrangements for your transportation can be made.

3. You are hereby notified that prior to the issuance of a final order for your removal and repatriation you are entitled to a hearing before a hearing board appointed by the Attorney General. If you request a

hearing as hereinafter provided, you will be accorded an opportunity to appear in person and to present evidence to show that you are not dangerous to the public peace and safety of the United States because of your adherence to an enemy government or to the principles of government thereof, or to show mitigating or extenuating circumstances in your case which you believe should constitute a valid reason why you should not be ordered repatriated.

4. You may obtain a hearing before a repatriation hearing board by executing in triplicate the form of Acknowledgment of Notice and Request for Alien Enemy Repatriation Hearing which will be given to you and by transmitting it to an official of the Immigration and Naturalization Service in charge of your custody within ten days of receipt of this notice. If a written request is not made on this Acknowledgment form within ten days of receipt of this notice, you are advised that the Attorney General will enter a final order for your removal from the United States and repatriation to the country of your nationality. If you request a hearing on this Acknowledgment form within the prescribed time you will be notified of the place and time of the hearing. A member of your family or any other individual may accompany you during your appearance before the hearing board and you may have witnesses appear and testify on your behalf or submit affidavits or other documentary material on your behalf.

If you do not wish a hearing you are required to indicate that fact on the prescribed Acknowledgment form.

By order of the Attorney General.

HERBERT WECHSLER,
Assistant Attorney General.

Washington, D. C.
July 26, 1945.

Receipt of this notice is hereby acknowledged (Date) July 31. 1945.

____ ____,
Signature of alien enemy.

Above NOTICE is mentioned but only partly quoted in Petitioner's Report (R. 8 and 9) and also dealt with in the Statement (A. 128 and 139) which was sent with the Report to the Attorney General on January 16, 1946. In the light of the later developments the referred to comment in these two papers regarding the said NOTICE carries even more weight today than when it was made, just as the hypocrisy of that NOTICE in connection with the ORDER of removal (R. 3), as well as the fraud of "the farcical hearings granted alien enemies to serve as window-dressing for the public" (R. third § of 5) are still more apparent today. At this point, special attention is called to Petitioner's Statement for the Attorney General of September 24, 1946, which speaks for itself (A. 139).

After examining this material the Honorable Supreme Court will understand why Petitioner after the tragic death of the "dangerous" alien enemy, Rudi Weiler, wrote that letter *J'accuse* to the Attorney General on January 14, 1947, and enclosed a copy of his letter to Mrs. Weiler and of her answer to him (A. 151). And it will also be understood why now Petitioner is quoting from a very significant letter of Mr. A. L. Pomerantz, former Deputy Chief Counsel at Nuremberg, who was senior trial counsel in all Nazi industrialist cases, published in the New York Times of May 4, 1947. His letter is so significant because the situation and procedure he attacks present a striking parallel to the senseless persecution of those so-called alien enemies, *i.e.*, civilian internees who are decent legally admitted alien residents, although the war is over since May 8, 1945, and the end of war hostilities officially declared on December 31, 1946. Listen:

> ". . . our Government's prosecution of Nazi criminal organizations at Nuremberg . . . observed the highest traditions of American legal process. Indictments, setting forth the charges in detail, were served

on the affected organizations. They were afforded the right to counsel of their own choosing, failing which we furnished them with counsel. . . . This was American due process in Germany. This was our show window display for the German people to see that no one, not even Goering, could be condemned without a fair trial.

"Upon returning to the United States I found that, whatever we may have taught the Nazis, we have absorbed into our own legal system the German tyranny that we fought and inveighed against. I refer to our executive order which provides that any one of the two and one-half million employees in the executive branch of our Federal Government can be summarily fired if he is, or ever was, a member of, or in 'sympathetic association' with, any organization or combination of persons placed by the Attorney General . . . on his private black list.

". . . The Attorney General merely says: 'Thou art condemned.' Thereupon its members, past, present and future, are automatically adjudged guilty of the heinous offence of disloyalty to their Government. The American citizen, unlike his German counterpart, is afforded no opportunity to challenge the Attorney General's ex parte condemnation of his organization.

"This conviction without a trial, borrowed from the darkest days of the Nazi inquisition, is a startling innovation in American judicial procedure. . . . On this charge of personal disloyalty, the governmental employee gets a trial—a mockery of a trial . . . on an indictment that doesn't inform you of the charges, and with no opportunity to confront or examine, or even to know of, the complaining witnesses. And the burden of disproving undisclosed charges rests on the defendant. It should be added—shades of the malodorous German People's Courts!—that the tribunal which hears these cases is appointed by and responsible to the department head, who may be the complainant.

"This is twentieth century American justice.

". . . Zechariah Chafee, Jr. . . . takes the calm view that 'the situation can be redeemed' by the self-

imposed discipline of the 'heads of the individual departments or agencies' charged with enforcement.

"'. . . But I find no comfort or redemption in this hope. In the first place, we proudly boast that ours is a government of laws, not of men. It is our laws which furnish us the prophylaxis against the possibility of abuse from evil or stupid men. Second, I would prefer, particularly in this hysterical period, not to be dependent on the grace and conscience of the wild-eyed crusaders who may make up a large part of our enforcement units. In these days, when the issues are getting sharper and hotter, when dissent from Government policy brings down on the head of the dissenter pathological fury, even threats of jail, it is dangerous to have to depend on those who have the power to use it temperately.

"In my judgment, the Executive Order is, both substantively and procedurally, the most Nazi-like and terrifying law since the ALIEN AND SEDITION ACTS. It should be repealed in toto. There are enough laws already on our books to protect us against treason, sabotage and real disloyalty."

That's exactly what the said civilian alien enemy internees have been getting all along. "Thou art condemned!" says the Attorney General looking at his "private black list"—concocted by God knows whom—and thou art imprisoned for years and finally deported, branded as a "dangerous" animal, to suffer more persecution, internment and hardships in the "horror camp" that hunger-ridden prostrate Germany is today. All this without due process of law, simply by dictation on the basis of the most arbitrary discrimination and procedure.

In the light of the dangerous development illustrated above by an intelligent and informed American, the Opinion of Judge Leibell as well as the Brief for Respondent-Appellee are natural symptoms of an alarming state of affairs. Diseased or immature minds cannot or do not wish to under-

stand that the argument that the United States still is technically at war with a non-existing German state is mere false pretense for the exercise of arbitrary power in contravention of vested natural and constitutional rights; and that the continuance of the exercise of such tyrannical powers is un-American and dishonest, illegal and a great threat to the American Way of Life compared to which any alleged danger from this Petitioner is infinitesimal.

It is of course obvious that the men responsible for the Alien Enemy Act of 1798 never intended it to become an instrument in the hands of irresponsible boobs to persecute and torture helpless civilian internees, as it is equally obvious that the actual manner of interpretation and application of this obsolete and controversial Act definitely is also against the very spirit of the law itself. Moreover, the fact that Judge Leibell in his Opinions and the Respondent in his Brief completely ignore the main issue involved, *i.e.*, the unalienable rights given to every human being without exception by GOD, THE SUPREME LAW, shows that both are either godless men who not believing in a Supreme Being reject the American Purpose proclaimed in the Declaration of Independence, the First Law of the land, or that they are hypocrites who ignore the cardinal point because they feel in their hearts or suspect in their heads that this Petitioner is right and his argument sound. Convention says that it isn't good taste to talk about religion. This sort of evasion is nonsense. Religion is the most important thing in the world. People either act according to its teachings (and precious few such people are), or they betray them. Nearly every issue in life, when boiled down to its essentials, is a moral and religious one.

(16) The Appellate Court says that Ludecke argues "that due process of law guaranteed by the Fourteenth Amendment to the Constitution entitled him to a judicial

hearing" (R. 36). Here the Honorable Court errs. Petitioner based his right to a judicial hearing, first, on the very law allegedly authorizing arbitrary procedures, namely on Section 23 of the Alien Enemy Act of 1798; second, on his constitutional rights, that is, on Article V of the Ten Original Amendments, the so-called Bill of Rights; and third, on his unalienable, inherent natural rights given to all men, be they citizens, aliens, or alien enemies, by a source of law more fundamental than any party or majority or any human institution, as the Declaration of Independence proclaimed, the First Law of the land, which however inadequately is incorporated as the Bill of Rights in the body of the Constitution of the United States, and in one way or another either as "Declaration of Rights" or "Bill of Rights" in the bodies of all the constitutions of the states, except New York (R. 1 and 4; also A. 106, 107, 124, 125).

In conclusion, it must be emphasized that both the District Court and the Appellate Court persisted in the constitutionality of the Alien Enemy Act and of the Presidential Proclamation No. 2655 and persisted in dodging the fundamental issue involved, in spite of the fact that Petitioner insisted throughout, in all his Statements, Arguments and Briefs that it is the principal question, namely, whether or no THE SUPREME LAW, THE LAW OF GOD, recognized and established in the National Law (A. 110), is valid in this Christian land, and whether or not IT is applicable to all men and all times, as Lincoln said. That is the Cardinal Point, which must be settled and which the Supreme Court of the United States should settle once and for all.

Questions Presented

The principal question presented is whether this Petitioner, a white man, who like Dred Scott, a black man,[6] is a human being, on account of this undeniable fact has unalienable, inherent natural rights, valid in war and peace, because all human beings, exclusive of race, color or creed, that is, without exception, have these unalienable rights, valid at all times, based on self-evident truths recognized as such in 1776, reasserted and reaffirmed in the American Civil War and this Second World War.

This central fundamental question leads to the following subsidiary questions:

(1) Are these unalienable rights valid in time of peace and in time of war, because they are God-given inherent natural rights, therefore unalienable rights "applicable to all men and all times," as Lincoln said?

(2) Is Natural and Moral Law superior to human law, at any time and under any circumstances, and if, should Divine Law always, in time of peace and in time of war, supersede the human law if contrary to this?

(3) Are all people, residing within the boundaries of the United States of America, be they citizens, aliens or alien enemies, members of the human race? And if so, should the unalienable rights of so-called alien enemies be protected in time of peace and war on the basis of existing valid American National Law, *i. e.*, the Constitution of the United States, first, because of the fact of the self-evident truth that all men, exclusive of race, creed or color, without exception, have unalienable rights inherent in us by birth, and second, because of the fact that these natural rights

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[6] *Dred Scott* v. *Stanford*, 19 Howard 393 (1857); see (A. 108-9).

are incorporated however inadequately, in one way or another, in the body of the Constitution of the United States and in the constitutions of all the states except New York?

(4) Should American National Law, that is the Constitution of the United States, whenever in conflict with the Divine Law written into the heart of man, be amended and brought into harmony with the Divine Law?

(5) Should a statute of American national law, if casuistic interpretation and its practical application are conflicting with Divine Law, be null and void *per se*, or should it be valid and practically applied simply because immature casuists maneuvered into the seat of public servants and abusing the power entrusted to them by the people choose to persist in its constitutionality on the basis of twisted letters of the law? In other words, should fundamental questions of right and wrong be resolved by the unsound and loose reasoning of cheap opportunists and immature quibblers, selfish politicians and hate-mongers, rather than on the sound and solid ground of moral reason inspired and guided by Divine Law written into the heart of man?

(6) Is the Alien Enemy Act of 1798 (50 U. S. C. 21-24) a Whole which should be interpreted and practically applied as a Whole, because each Section, that is, 21, 22, 23, and 24, is a part of the Whole which together make the Whole? Or can anyone of the four Sections be treated as a separate and independent unit without regard to the whole, interpreted and practically applied at will by irresponsible public servants, even if their arbitrary action is not only contrary to Divine Law but also violating the purpose and the spirit of the very Act itself?

(7) Is the said Alien Enemy Act constitutional and in harmony with Divine Law if applied as a whole, because Section 23 prescribes due process of law? And is it uncon-

stitutional and contrary to Divine Law if applied without due process of law by ignoring Section 23, because it would involve the violation of the constitutional and natural unalienable rights of the victim as happened in the instant case of this Petitioner, who was brutally deprived of his Liberty and all that implies and of his pursuit of Happiness and all that implies for nearly six years and five months without due process of law, and now is ordered deported and exposed to even more internment and persecution, misery and hardships in Germany, branding him with the infamous stigma—"dangerous to the public peace and safety of the United States" for no good reason whatever and without due process of law?

(8) Is it constitutional and in harmony with the Divine Law to ruin an honest man's married life and livelihood by depriving him of his liberty and pursuit of happiness, and after staging farcical hearings as window-dressing for the public to order the deportation of this law-abiding man of goodwill deemed to be "dangerous" on the basis of pure fraud, that is, on the basis of alleged but not existing evidence or fabricated evidence unknown to him, as happened in the instant case of this Petitoner, who is not only *not* dangerous but a constructive member of society and a decent legally admitted resident since 1927, of whom three respected Circuit Judges unanimously declared that "on the face of the record it is hard to see why the relator should now be compelled to go back"? Whose accomplishments are a matter of record and who according to the sworn statements of six loyal, responsible and distinguished Americans positively is worthy of the privilege of American citizenship? (A. 80, 84, 88, 90, 133, 134.)

(9) Is it constitutional and in harmony with Divine Law to apply the Alien Enemy Act but ignore Section 22, which provides for voluntary departure from the United States,

and even ignore the very Order of removal, signed by the Attorney General himself, which says that only "in the event the said alien enemy fails or neglects to depart from the United States within the thirty days, the Commissioner of Immigration and Naturalization is directed to provide for the alien's removal to Germany," and to order this Petitioner's deportation against his will to Germany, when as a matter of fact and of record this Petitioner did *not* neglect to make arrangements for his voluntary departure to Latin America but found, that it was physically impossible to do so within the allot-ed thirty days, a fact well known to the authorities, because they had taken good care to make it so?

(10) Is the status of "a declared war between the United States and any foreign nation or government" as stated in the opening sentence of Section 21 of the Alien Enemy Act, *i. e.* in this case, the status of a declared war between the United States and the functioning German Government or the existing German nation between December 11, 1941, the date of Germany's declaration of war, and May 8, 1945, the date of Germany's unconditional surrender, the same in the sense of the Alien Enemy Act and in the light of International Law as the status of a merely technical state of war between the existing United States and the no longer existing German nation or government, especially after the cessation of actual hostilities?

(11) If the status of a declared war is *not* the same as the status of a merely technical state of war, and if the status of an existing and legally recognized nation or government is *not* the same as the status of a no longer existing and legally recognized nation or government, is it not then that the practical application of the Alien Enemy Act of 1798 (50 U. S. C. 21-24) as well as the Proclamation of the President, No. 2655, dated July 14, 1945, acting under the author-

ity of the said Alien Enemy Act, are illegal acts, therefore null and void, because they are not within the law of the said Act itself in view of the fact that the said Presidential Proclamation 2655 was made sixty-seven days after Germany's unconditional surrender, that is, after the dissolution of the German nation as an organized and legally recognized body politic, thus changing the status of an existing nation or government to a no longer existing nation or government, especially after the President's Proclamation 2714 of December 31, 1946, terminating the period of hostilities of World War II?

(12) Considering these irrefutable facts and unanswerable conclusions implied in the foregoing questions, is it lawful after the cessation of actual hostilities to still apply the Alien Enemy Act to natives of a not only no longer *hostile* but even no longer existing and legally recognized nation, particularly in the light of Section 21 of the said Act which says that "all natives . . . of the *hostile* nation or government . . . shall be liable to be apprehended . . . and removed as alien enemies," and to even continue to persist in removing them and on top of that without due process of law in spite of Section 23 of the very same Act prescribing due process of law?

(13) Further, is it or is it not a fact that some employee, or employees, of the Department of Justice has, or have been, and did in the case at bar, arbitrarily and of his or their own initiative or under the influence of some person or persons in-or-outside the Government, determined the question of Petitioner's being dangerous and deliberately evaded the application of the said Section 23 providing for a judicial hearing to determine that decisive question?

(14) Altogether, is not the whole attitude and procedure in dealing with legally admitted decent civilian internees,

men, women and children, a sorry performance indeed, unworthy of this great nation, and the argument offered a paltry and dolose argumentation on the part of the "Government," that is, in point of fact on the part of some employee, or employees, of the Department of Justice, who sailing under color of authority of the Government of the United States of America jeopardize not only the prestige of the high office they are supposed to serve, but also the prestige of the President of the United States, the Chief of the Nation?

In other words, is this travesty of justice, this prostitution of duty and office, this cynical contempt of cherished traditions and established values, this criminal abuse of power and totalitarian procedure, all done in the name and for the sake of democracy under color of the authority of the Government, is all this hyprocrisy and fraud something to be hushed, shielded and affirmed by the highest tribunal in this dear land, the Supreme Court of the United States? Or is it something which must be renounced, definitely and categorically, for all the world to hear, because it is incompatible with Natural and National Law, with American principles and ideals, with the pledges proclaimed in the Declaration of Independence and the Atlantic Charter, with the unnumbered assurances and lofty words of American Presidents and statesmen, living and dead?

(15) Finally, should there be no heart in law or would it be right that heart should have its fundamental place in law? And should the human law be based on the Eternal Law of God written into the heart of man, therefore justice be the only end that law should serve and seek?

Specification of Errors

The Circuit Court of Appeals for the Second Circuit erred:

1. In holding that Petitioner is *not* entitled to a judicial hearings for reasons stated in *United States ex rel. Schlueter* v. *Watkins*, and that said reasons are unanswerable.

2. In holding that the Alien Enemy Act has *not* ceased to be operative owing to the unconditional surrender of Germany and the cessation of actual hostilities for reasons stated in *United States ex rel. Kessler* v. *Watkins*, and that said reasons are unanswerable.

3. In affirming the Order of the District Court dismissing Petitioner's writ of habeas corpus, first, because the Alien Enemy Act calls for no hearing where the removal of the alien enemy is by executive action, and second, because that Act remains effective so long as a state of war exists with the German Nation, as it still does, under the terms of the President's Proclamation 2714 of December 31, 1946.

4. In holding that the nature or weight of the evidence before the Repatriation Hearing Board, or the finding of the Attorney General is not subject to judicial review.

5. In affirming Judge Rifkind's decision in *United States ex rel. Schlueter* v. *Watkins*, 158 F. 2d 853, and in accepting the decision of the United States Court of Appeals for the District of Columbia in *Citizens Protective League* v. *Clark*, 155 F. 290, 295, 2d, which both sanctioned the Government's illegal procedure and untenable interpretation and wrongful application of the Alien Enemy Act and of the Presidential Proclamation 2655 of July 14, 1945.

6. In failing to deal with and thus ignore the principal question involved, which Petitioner has insisted throughout

his legal battle is the cardinal point at issue, namely that he being a member of the human race therefore is entitled to a judicial hearing, because every human being, exclusive of race, color or creed, has unalienable inherent natural rights, which are valid in time of peace and in time of war.

7. In failing to reverse the judgment and release this Petitioner or, in the alternative, to reverse the judgment and order a judicial trial with due process of law.

ARGUMENT

Reasons for Reversing the Judgment of the Court Below

1. The facts show beyond dispute that Petitioner did not have a fair hearing, and that the alleged evidence, that he is "dangerous to the public peace and safety of the United States" and therefore subject to removal, does not exist, as demonstrated in this Petition and in the papers submitted in the Transcript of Record and Appendix.

2. The fact that Petitioner is entitled to a judicial hearing on the basis of Natural and National Law as well as the Alien Enemy Act itself is an established irrefutable fact, as demonstrated in this Petition and in the papers submitted in the Transcript of Record and Appendix.

3. The actual application of the Alien Enemy Act and the ordered application of the Proclamation of the President, No. 2655, dated July 14, 1945, that is, the internment and ordered deportation of this Petitioner without due process of law, are unlawful, first, because of the two foregoing points, and second, because of the following reasons:

a. The Alien Enemy Act of 1798 (Title 50 U. S. C. 21-24) and the Presidential Proclamation 2655 are constitutional and in harmony with Divine Law and Moral Law if

applied with due process of law, but become unconstitutional and contrary to Divine and Moral Law if applied without due process of law.

b. The Government errs in arguing that the Alien Enemy Act and the Presidential Proclamations 2526 and 2655 may be applied without due process of law. Therefore, the said Act and Proclamations are wrongfully applied to the instant case, because application without due process of law is both a violation of the Act itself and of the said Proclamations as well as of Natural and National Law as demonstrated under (2) to (12) of FACTS AND POINTS (B. 6-13).[7]

It should be emphasized at this point, that Petitioner was not lawfully interned and therefore he cannot be lawfully deported under Proclamation 2655 as the same authorizes only the deportation of those previously lawfully interned.

Presidential Proclamation 2526 of December 8, 1941, is the only proclamation, under which the Attorney General could attempt to act in interning German alien enemies. In its premises reference is made in the first paragraph to Section 21 of Title 50 of the United States Code, and the second paragraph reads "And Whereas by Sections 22, 23, and 24 of title 50 of the United States Code further provision is made relative to alien enemies." The sixth paragraph reads as follows;

> "All alien enemies shall be liable to restraint, or to give security, or to remove and depart from the United States in the manner prescribed by sections 23 and 24 of title 50 of the United States Code, and as prescribed in the regulations duly promulgated by the President."

It is Petitioner's contention that the President would not have referred, in the Proclamation No. 2526, to Sections

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[7] Bracketed B with figures appearing in this Petition refers to pages of the text of this Petition.

23 and 24, if he had intended that the Attorney General should have the power to intern alien enemies without judicial determination of the pertinent facts, and that authorizing the Attorney General to cause an alien enemy to be confined in a "place of detention" did not authorize him to intern such alien enemy. In other words, it is Petitioner's contention that the President attempted to give the Attorney General power to detain an alien enemy until a court passed upon the question of whether or not such enemy should be interned at least as to legally admitted residents.

Therefore, Presidential Proclamation 2655, even if valid, only authorized the Attorney General to deport previously interned aliens, and Proclamation 2526, the only proclamation authorizing internment contemplated a judicial hearing under Sec. 23 of Title 50. Such a hearing was not given Petitioner.

Moreover, Presidential Proclamation 2655, even if valid, only authorized the deportation of an alien after he failed to depart after a prescribed period when given the opportunity to do so. When he is held in custody on an order of removal without having been given that opportunity even when on parole to arrange for voluntary departure (B. (9) 27; A. 123, 124, 140-1), his detention is unlawful.

c. Due process of law as required by the Constitution in cases of residents entitles a resident alien enemy to a judicial hearing under Section 23, Title 50, before internment or deportation, said section expressly stating that it is applicable to "any alien enemy resident."

d. Section 24 of Title 50 does not authorize anyone but the United States Marshal to deport an alien enemy and Sections 21, 22 and 23 do not authorize the Attorney General or immigration officials to act in lieu of the Marshal.

e. When Petitioner entered this country he did so as a friendly alien and lawfully resided here as such whereby he

became vested with constitutional rights of which he cannot be divested by subsequent relations beyond his control between the land from whence he came and this country. While it may be argued that those rights are subject to the Alien Enemy Act, that does not mean that the same may be applied in contravention of those rights, when there is no longer any clear and present danger justifying same any more than martial law may be applied in contravention of such rights in the absence of such a danger. It was clearly the intent of Congress, that the Alien Enemy Act be used consistent with such vested rights and, if it was not, an unconstitutional intent to extend the plenary power of government beyond the limits prescribed by the Constitution is ineffective to that end.

f. The right of this Petitioner to remain in the United States, at liberty, after having entered the country lawfully, and resided there permanently for many years, was a valuable and substantial right, and one of which he could not be deprived except in accordance with the basic principles of Due Process and Natural Justice, under the settled principles of National and International Law.

g. Although Section 21 of the Alien Enemy Act does not expressly require that a native of a hostile nation shall be accorded a judicial hearing before he is ordered to depart from the United States, the right to a judicial hearing thereunder is implied; because there is no such thing, under the Constitution of the United States, as a valid deprivation of property or liberty without according the party affected a judicial hearing; and the Courts will construe a statute, that deals with the liberty and property of a person, as requiring a judicial hearing; also, the language therein that the President shall "provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart," etc., requires a judicial determination,

who shall or shall not, be permitted to reside within the United States. It should be noted too, first, that Section 22 of the Act provides for reasonable time to settle affairs and arrange for voluntary departure; and second, that said Section 22 is referred to in the second paragraph of Presidential Proclamation 2526 and in the third paragraph of Presidential Proclamation 2655. The opportunity to arrange for voluntary departure was not given Petitioner (B. (9) 27; A. 124, 140-1).

h. Internment and ordered deportation of Petitioner without due process of law are flagrant miscarriages of justice, because they involve an arbitrary and unjust use of war powers when actual hostilities have ceased, as demonstrated under (13) to (16) of FACTS AND POINTS (B. 13-24).

4. The Alien Enemy Act was ceased to be operative, first, because of Germany's unconditional surrender which automatically liquidated her Government and terminated her status of a nation; and second, because the President's Proclamation 2714 of December 31, 1946, terminated the war hostilities and thereby *ipso facto* Germany's status of a hostile nation (hostilities are between hostile nations, therefore, after termination of hostilities between the respective nations these nations are no longer hostile nations), which fact in turn terminated the status of German aliens as alien enemies because only aliens of a "hostile" nation can be alien enemies according to Section 21 of the Alien Enemy Act which expressly states that "all natives, citizens, denizens, or subjects of the *hostile* nation or government . . . shall be liable to be apprehended, restrained, secured, and removed as *alien enemies.*" (Italics are Petitioner's.)

5. The Alien Enemy Act does not and cannot remain effective because of a merely technical state of war so construe

by the said Presidential Order 2714 for expediency's sake on whatever valid or invalid grounds, for under no circumstances is such a merely technical state of war between the existing United States and a non existing German nation or Government the same as "a declared war between the [existing] United States and any [existing] foreign nation or government" in the sense intended in this quoted stipulation in Section 21 of the Alien Enemy Act.

Also, it is too clear for dispute, that Germany's unconditional surrender and all that involved and signified not only terminated the status of the German Government as a recognized and even no longer existing executive body, but also the status of the German people as a recognized and even no longer existing nation, and that *de jure* and *de facto*.

Therefore, on the basis of these last two points, 4 and 5, alone, the application of the Alien Enemy Act to the instant case now is a violation of that very act both in letter and in spirit. If there is still a state of war between the United States and people now living in the geographical area from whence Petitioner came, then it can only be with the American military dictatorship in the American zone, with the British Military dictatorship in the British zone, with the French miltary dictatorship in the French zone, and with the Russian military dictatorship in the Russian zone, but certainly not with a no longer existing German nation.

By its unconditional surrender and the abolition of its last national government, by its mutilation and division into four zones, each of which is occupied by foreign armies and absolutely under foreign control, Germany has ceased to exist as a sovereign state, subject to international law, and has ceased to exist as a compact nation as understood in Section 21 of the Alien Enemy Act. By the Declaration of Berlin of June 5, 1945, the United States, France, the

United Kingdom and the Soviet Union assumed sovereignty over the former German territory and its population. They still exercise their joint sovereignty through the Control Council, the legitimate successor to the last government of Germany. Hence the argument that there still is a state of war with a non-existing German nation is mere false pretense for the exercise of arbitrary power in contravention of vested natural and constitutional rights and in violation of the Alien Enemy Act itself; therefore, the continuance of the exercise of such tyrannical powers is un-American and dishonest, illegal and a great threat to the American Way of Life, compared to which any alleged danger from this Petitioner is infinitesimal.

6. The ordered deportation of Petitioner is contrary to the dictates of humanity and contrary to the new policy regarding the German people officially abolishing the policy of hate, as it is contrary to natural, national- and international law, and under the present conditions and circumstances in Germany would mean further internment, persecution and hardships, thus inflicting cruel and inhuman punishment on Petitioner for no good reason whatsoever.

7. The Appellate Court refers in his Opinion in the instant case (R. 36) to his Opinion in the *USA ex rel. Kessler* v. *Watkins*, and in that one to the Opinion of the United States Court of Appeals for the District of Columbia and to his own decision in *USA ex rel. Schlueter* v. *Watkins* affirming Judge Rifkind's Opinion who in turn refers to and quotes from the above mentioned Opinion of the United States Court of Appeals for the District of Columbia in *Citizens Protective League, et al.*, v. *Tom C. Clark, Attorney General of the United States.* After studying these Opinions it would appear that the last two are accepted as the most important precedents to rely upon.

Judge Rifkind in his Opinion in *USA ex rel. Schlueter* v. *Watkins*, Civ. 35-681, 67 F. Supp. 556, says that:

> The case presents for decision four questions.
>
> 1. Do the relevant congressional enactments and the proclamations and regulations issued thereunder authorize the Attorney General to remove the relator from the United States?
>
> 2. If so, are these statutes consonant with the Constitution?
>
> 3. If so, is the order upon which relator is detained nevertheless insufficient to justify the detention and the subsequent removal because it was the end product of a proceeding from which the indicia of "due process" were absent?
>
> 4. To what extent may the courts review the action of the executive in ordering the removal of an enemy alien?
>
> The questions will be treated in the order stated.

Petitioner believes that the first question already is settled beyond dispute, namely that the Attorney General is authorized to remove the relator only on the basis of due process of law; that the second question already is settled beyond dispute, namely that these statutes are consonant with the Constitution only if applied on the basis of due process of law; that the third question logically is also settled already beyond dispute that under no circumstances said Order justifies Petitioner's further detention and subsequent removal without due process of law; and finally, that the fourth question also is already settled beyond dispute, because it is unlawful of the executive to order the removal of an alien enemy without due process of law.

Special attention, however, is called to two statements made by Judge Rifkind in answering the second question quoted above. The first statement reads as follows:

> "That the United States, despite cessation of hostilities, is still at war with Germany has been authoritatively settled. (*Citizens Protective League* v. *Clark*, *supra*, at p. 295; . . ."

Here is what Judge Prettyman has to say regarding the above quoted point in his Opinion in *Citizens Protective League* v. *Clark*, 155 F. (2d) 990 (App. D. C.):

> "Unreviewable power of the President to restrain, and to provide for the removal of, alien enemies *in time of war*, is the essence of the Act. [This, of course, is merely an opinion of Judge Prettyman, which should not be looked upon as an unbreakable precedent, for it definitely is a violation of the act, in letter and in spirit.] The comment of the authorities we have mentioned has been directed to that feature. Chief Justice Marshall said, 'The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself.' However jealously we may guard the civil rights of all residents within our borders, neither those considerations nor the 'dictates of humanity and national hospitality' can be permitted to impinge upon the overriding necessities of the power *to wage war successfully*.[20] The President not only has the power, under the broad grants by the Congress, but has the solemn responsibility to make certain that the *conduct of war* is not only unimpeded but suffers from no threat of impediment. 'Where, as they did here, the conditions call for the exercise of judgment and discretion and for the choice of means by these branches of the Government on which the Constitution has placed the *responsibility of war-making*, it is not for any court to sit in review of the wisdom of their action or substitute its judgment for theirs.[21] As a practical matter, it is inconceivable that

before an alien enemy could be removed from the territory of this country *in time of war*, the President . . ."

The significance of the text quoted above is obvious, that is, Judge Prettyman's own words and those quoted by him. "To wage war successfully" and "the responsibility of war-making"—the very terms used in the *Hirabayashi* case judged in *1943* (see footnote 20 in quoted text on previous page), that is, in time of actual warfare,—refer to active war with actual hostilities and not to a merely technical state of war without actual hostilities. Thus, "in time of war" and the "conduct of war" to quote Judge Prettyman's own words can only mean active warfare with actual hostilities and not merely a technical state of war without actual hostilities, apart from the fact that the term "conduct of war" clearly signifies active warfare with actual hostilities.

Therefore, Judge Rifkind's statement "That the United States, despite cessation of hostilities, is still at war with Germany has been authoritatively [!] settled. [!] (*Citizens Protective League* v. *Clark, supra,* at p. 295)," is a frivolous statement. Nothing has been "settled" of the sort, and certainly far from "authoritatively", because the principal precedent referred to, the case of the *Citizens Protective League* v. *Clark*, only speaks of active warfare, etc., and not even suggests a merely technical state of war without hostilities. Hence, the Hon. Frank, Circuit Judge, in his Opinion in *USA Schleuter* v. *Watkins*, 158 F. 2d 853, is on very thin ice indeed when he states that "The facts are fully stated in the excellent opinion of District Judge Rifkind" and that "We agree with Judge Rifkind, and with Judge Prettyman's opinion in *Citizens Protective League* v. *Clark* . . ."; and the Hon. Augustus N. Hand, Circuit

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[20] *Hirabayashi* v. *United States*, 320 U. S. 81, 93, 63 S. Ct. 1375, 87 L. Ed. 1774 (1943).

[21] Ibid.

Judge, is making a bold statement when he says that "In both decisions we reached conclusions contrary to the relator's contentions and for reasons which seem to us unanswerable (R. 37) after referring to his own opinion in *USA ex rel. Kessler* v. *Watkins*, in which he refers to the above mentioned *Schleuter* v. *Watkins* and *Citizens Protective League* v. *Clark* cases, which in this instance at least are incompetent, irrelevant and immaterial precedents. To rely upon precedents, when the question of life and death is involved, particularly on invalid precedents such as these, is very serious business indeed, and as Lincoln said, "Mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power, except where the acquiescence of the people and the states can be considered as well as settled." (Speech at Springfield, Ill., June 26, 1857.)

This leads to the second statement Judge Rifkind made at the end of his answer to the second question quoted above (P. 37) which reads as follows:

> "True, the Supreme Court has never directly passed on the constitutional validity of the Alien Enemy Act. But in the light of the long history of the statute, the broad base of constitutional power from which it springs, the uniform recognition which has been accorded the statute as valid whenever occasion has arisen, and the decision of DeLacey *v.* U. S., C.C.A. 9, 1918, 249 Fed. 625, 626-8, and Citizens Protective League *v.* Clark, the question for this Court, is settled in favor of constitutionality."

However, the question involved is *not* the constit tional validity of the said Act as such and as a whole, but the valid or invalid interpretation of that Act. And there can be no doubt, that the interpretation and practical application adopted by the "Government" and approved by Judge Rifkind *et al.*, is not only a violation in letter and in spirit

of the very Act itself, but also of Natural Law and National Law, the Constitution of the United States, therefore invalid.

Moreover, it must be emphasized again, that there is not now a declared state of war between the United States of America and the country of which the Petitioner once was a subject, because hostilities have ceased ever since May 8, 1945, because said nation and government no longer exist as shown above, and that there is no longer any clear and present danger to the peace and safety of this country justifying the substitution of the executive for the judicial determination of the question of whether Petitioner is dangerous and should be removed.

In view of the fact that the difference between the status of a declared war with active warfare and the status of a merely technical state of war without actual hostilities is also an important and interesting question of International Law, a decision of the Supreme Court of Justice of Chile is significant. The following is a verbal translation of a UP report published in the Spanish paper *La Prensa* in New York City of July 3, 1947. It reads as follows:

> SANTIAGO, Chile, July 2 (UP).—The Ministers of the Government, the Foreign Affairs, Economics and Education, who are also members of Congress, are confronted today with the alternative to give up either their cabinet posts or their seat in Congress, owing to a decision of the Supreme Court of Justice.
>
> The Tribunal established that the state of war with Japan was terminated with the unconditional surrender of this country in 1945, even though no peace treaty had been signed. It was the state of war, which made many political combinations possible. For instance, only in actual war time could Senators and Representatives hold executive positions at the same time.
>
> So it came, that Alfredo Rosende, Raúl Juliet, Luis Bossay and Alejandro Ríos—all of them members of

the Chamber of Deputies—could keep their respective cabinet posts . . .

The four belonged to the majority and radical party and their resignations from the cabinet may cause a great political crisis.

The decision of the Supreme Court of Justice was rendered in the case of the conscript José Garate, of the artillery regiment at Tacna, who was accused of having murdered the civilian Manuel Mena on March 30th.

A civil judge in Buin . . . declared that Chile still being technically in a state of war with Japan only the military judges were competent to judge a Garate. The military judges did not agree and therefore asked the Supreme Tribunal to decide who should judge a Garate.

The Supreme Court determined that the idea of the military tribunal was that they should exercise their extraordinary powers solely in time of war and that there did not exist a state of war owing to the fact that the hostilities with Japan ceased in 1945.

It may be of interest also to quote here significant parts from a remarkable DECISION OF THE SUPREME COURT in Buenos Aires on August 21st, 1946, *re* a Writ of *Habeas Corpus* presented by the attorney Octavio A. Rivarola, Buenos Aires, Argentina, in favor of Juan Sigfredo Becker and others, apparently German aliens and legal residents, who had been arrested and detained for expulsion. The significant excerpts of this Decision are the following:

WHEREAS the alien, once residing in the country, has the same established rights and enjoys the same guarantees as the nationals. Article 20 of the National Constitution states so expressively in terms that are not necessary to quote, and this is confirmed by the declarations of rights and guarantees referring in all cases to residents. This does not mean, of course, that an alien whose activities are dangerous, endanger the security of the Nation or disturb the public order, cannot be deported. . . . That, therefore, the resident alien, though he may be expulsed when his conduct makes him

dangerous, is nevertheless protected by the constitutional guarantees by which all are covered against any arbitrary act and by which it is established that nobody may be punished without preceding trial, nor removed from the jurisdiction of judges, designated by the law, before the litigation of the case, that the defense of the person and his rights cannot be violated. (Article 18 of the National Constitution.) There are guarantees of an essentially judicial character, which, in the system of division of powers, were adopted by the Constitution in order to protect the subjects against all abuses, and which belong to the competence of the Judicial Power, exercised, according to article 94 of the Constitution, by a Supreme Court and other lower courts which the Congress may establish. It is this power which, in each particular case, decides and determines the rights, punishes and protects the resident against the misuse of force and arbitrary action.

This is confirmed by article 95, establishing that, under no circumstances, the President of the Nation may exercise judicial functions, arrogate to himself an intervention in cases pending and reopen closed ones. It has been said that the expulsion is not a punishment, but this conclusion is difficult to sustain. It will not be a specific punishment as those established in the Penal Code until today, but in a general sense, it is a punishment, since the expulsion of an alien, who has established his family in the country, has made there his living, has acquired property, implies to make him suffer for his conduct, and that is a punishment. This is the concept of the term "punishment" in article 18.

It cannot be otherwise, because, take the reverse case, it would be enough that a new law might cross out of the Penal Code one of the established penalties so that the Executive Power might apply that penalty for its own end, which is absurd and which would lead to the loss of liberty and to tyranny. Even if it would not be so, the expulsion, under all circumstances, amounts to the loss of a right established by the Constitution, and its loss can be imposed only by judicial proceedings, after

due process of law, where the alien the same way as the national, may defend himself against charges brought against him, may prove their falsehood, his good conduct, all this before jurisdictionally competent, independent and fair judges who are remote from the passions of the moment and who have no other guide but the Constitution and the law, and no other aim but Truth and Justice.

The violation of these constitutional principles by the law 4144, attributing to the Executive Power the authority to expel all aliens whose conduct, according to its judgment, endangers the National security or disturbs the public order, is evident, and for this reason this Court in its capacity as the ultimate interpreter of the National Constitution, the supremacy of which it is called to maintain, is forced to declare it as such. . . .

Therefore, the sentence appealed to is revoked as far as it may have been the object of the extraordinary writ, and the relators should be set free.

ANTONIO SAGARNA
B. A. NAZAR ANCHORENA
(in dissidence with the reasoning)

FRANCISCO RAMOS MEJIA.
T. D. CASARES
(in dissidence with the reasoning)

Dissidence with the Reasoning:

. . . . . .

With the detention referred to, the Executive Power would do something that it could do only under a state of siege, and even then, only under the provision that the detainee does not prefer to leave the country voluntarily (Article 23).

Considering the ordinary duration of local proceedings, the alien, whom the Executive Power deprives by its own actions of his liberty during the trial, will suffer de facto, a punishment without the Executive

Power having the authority to impose it and without a law authorizing such procedure.

* * * * * * * *

THEREFORE, the decision of the Court of Appeals is herewith revoked, on these grounds, in so far as it has been the object of this extraordinary writ, and relators are ordered to be set free.

B. A. NAZAR ANCHORENA. T. D. CASARES.

8. It is an undeniable fact that attitude and procedure of the "Government", that is, some person or persons employed in the Department of Justice unknown to Petitioner who are acting on their own or under the influence of some person or persons in-or-outside the Government, in connection with the case at bar as well as with other cases of so-called dangerous alien enemies, are not only incompatible with established Natural and National Law and the Alien Enemy Act itself, but definitely also with only recently announced policies and convictions of the highest office-holders representing the American Government, therefore contrary to and sabotaging will and work of this very Government. The wide discrepancy, for instance, between all the lofty talk about human rights and the integrity and the dignity of the individual on the one hand, and on the other, the bitter reality, in the instant case, the arbitrary and brutal, totalitarian and irresponsible, treatment of this Petitioner is indeed as astonishing as it is alarming, because it apparently is symbolic of certain frauds, developments and trends, which remain unchecked despite the pledge in the Atlantic Charter, that all men in all lands were to be assured of living out their lives "in freedom from fear and want."

Of the mass of evidence of such binding declarations and statements as well as revealing accusations tending to support his view, Petitioner offers a few of the significant ex-

cerpts which are self-explanatory. We begin with the statements of some well-known Senators, who are not ashamed to protest injustice and dishonesty with equal passion, whether it occurs at home or abroad.

Said the Hon. William Langer, Senator of North Dakota and chairman of the Senate Committee on Civil Service, who was twice Attorney General and twice Governor of his state, on July 28, 1947, in A CALL TO ACTION:

> Unless you wake up you will find yourselves helpless. As of today millions of soldier boys and possibly any girl in World War II who trusted you to preserve democracy at home, while hundreds upon thousands lost their lives or came back blind, insane or maimed, now find no hope for a return to the way of life they left to fight for the preservation of America and its freedom. . . .
>
> My friends, our enemies are organized. They know neither race, color, nor creed. They are interested in money and profits and in ruling you. To them the word "democracy" is a joke. To them a Republican or a Democrat or a Socialist is all right if he plays their game. . . .
>
> You, and not the politicians, will decide whether patriotic lovers of America shall run this country, or whether it shall be governed by a horde of bureaucrats, none of whom you elected . . .

And in his letter To My Patriotic American Friends:

> Time and time and time again upon this floor I have asked the administration to reverse entirely the Morgenthau occupation plan for Germany. His idea of tearing down and destroying all of the industrial plants of the most industrialized area of Europe and turning them into agricultural fields and pastures means starvation, hunger, want, and suffering to the millions in Germany and in Europe as a whole.
>
> Millions of good, loyal, honest, fine, patriotic American citizens are relatives of those millions. . . . They

agree that the inhuman Morgenthau plan has resulted in chaos, hunger, want and suffering—all at an added cost to the taxpayers of the United States. And, Mr. President, although the war has been over for two years, we find millions of Germans still being tried in denazification courts, hundreds of thousands of them unable to get a job and held in concentration camps until they have been denazified. And we find this at a time when our Department of State and War Department are agreed that the United States must make friends with a new Germany and Austria if our influence is to mean anything in Europe.

(Congressional Record—Proceedings and Debates of the 80th Congress, First Session.)

Said the Hon. Homer E. Capehart, Senator of Indiana, in the Senate of the United States on February 5, 1946:

Mr. President, the alleged "peacetime" policies of this administration have degenerated into a deliberate face-saving fraud. The fact can no longer be suppressed, namely, the fact that it has been, and continues to be, the deliberate policy of a confidential and conspiritorial clique within the policy-making circles of this Government to draw and quarter a nation now reduced to abject misery.

In this process this clique, like a pack of hyenas struggling over the bloody entrails of a corpse, and inspired by a sadistic and fanatical hatred, are determined to destroy the German nation and the German people, no matter what the consequences. (C. Record—of the 79th Congress, Second Session.)

If that is true, and it most probably is, more or less, it explains also the otherwise inexplainable and unbelievable treatment of the helpless civilian German internees branded as "dangerous alien enemies."

Said Senator Taft in his Tacoma Address declaring United States Foreign policy a failure:

I do not see how we can hope to secure permanent peace in the world except by establishing law between

nations and equal justice under law. . . . . Our general attitude has been one of policy and expediency instead of law and fair dealing. Again I believe this attitude derives from the domestic policy of recent years which has proposed to turn over all discretion to deal with any serious problem to administrative boards unrestrained by definite statutes and unrestrained by court review. That domestic policy derided a government of law, and glorified a government of men unrestrained by law or justice to individuals. (New York Times, September 26, 1947.)

Said the President of the United States in his address at Monticello, home of Thomas Jefferson, on July 4, 1947:

The Declaration of Independence was an expression of democratic philosophy that sustained American patriots during the revolution and has ever since inspired men to fight to the death for their "unalienable rights."

• • • • • • •

A second requisite of peace among nations is common respect for basic human rights. Jefferson knew the relationship between respect for these rights and peaceful democracy. We see today with equal clarity the relationship between respect for human rights and the maintenance of world peace. So long as the basic rights of men are denied in any substantial portion of the earth, men everywhere must live in fear of their own rights and their own security.

• • • • • • •

The life of Thomas Jefferson demonstrates, to a remarkable degree, the strength and power of truth.

He believed, with deep conviction, that in this young nation the survival of freedom depended upon the survival of truth.

So it is with the world.

As the spirit of freedom and the spirit of truth spread throughout the world, so shall there be under-

standing and justice among men. (New York Times, July 5, 1947.)

Said the President of the United States in his letter of August 6, 1947, to Pope Pius XII:

> I desire to do everything in my power to support and to contribute to a concert of all the forces striving for a moral world.
>
> • • • • • • •
>
> These moral aspirations are in the hearts of good men the world over . . . [who] can unite their efforts for the preservation and support of the principles of freedom and morality and justice . . .
>
> Your Holiness, this is a Christian nation. More than a half century ago that declaration was written into the decrees of the highest court in this land. . . .
>
> I believe that the greatest need of the world today, fundamental to all else, is a renewal of faith. I seek to encourage renewed faith in the dignity and worth of the human person in all lands, to the end that *the individual's sacred rights,* inherent in his relationship to God and his fellows, will be respected in every land. We must have faith in the inevitable triumph of truth and decency; . . .
>
> . . . I believe with heartfelt conviction that those who do not recognize their responsibility to Almighty God cannot meet their full duty toward their fellow men.

Said the Pope in his answer, dated August 26, 1947, inter alia:

> Truth has lost none of its power to rally to its cause the most enlightened minds and noblest spirits. Their ardour is fed by the flame of righteous freedom struggling to break through injustice and lying. But those who possess the truth must be conscientious to define it clearly when its foes cleverly distort it; bold to defend it and generous enough to set the course of their

lives both national and personal by its dictates. (N. Y. T. Aug. 29—47.)

As much as any event that clouds the atmosphere this unusual correspondence is also a sign of crisis, the crisis of thought throughout the world leading to one catastrophe after another. It is well to listen also to the following statement of the Pope, the papal father of many millions of American men, women and children:

> Likewise, much was said of the state of liberty which was to have been another perfect fruit of victory: liberty triumphing over despotism and over violence. But this cannot flourish except where justice and law command and efficaciously secure the respect for individual and collective dignity.
>
> Meanwhile the world is still waiting and pleading that justice and law create stable conditions for man and society. In the meantime, millions of human beings continue to live under oppression and despotic rule. For them nothing is safe, neither home, nor goods, nor liberty, nor honor; thus the last ray of happiness, the last spark of courage, dies in their hearts.
>
> In our Christmas message of 1944, addressing a world full of enthusiasm for democracy and eager to be its champion and proponent, we expounded the main moral requirements for a right and healthy democracy. Today not a few fear that the hope placed in that order has diminished, owing to the striking contrast between democracy in words and the concrete reality. (N. Y. T. June 3—47.)

Said David Lilienthal, Chairman of the U. S. Atomic Energy Commission in his widely publicized and acclaimed statement to the Congressional Atomic Committee answering the charge of Senator McKellar of Tennessee that he has Communistic leanings:

> . . . I believe—and I do so conceive the Constitution of the United States to rest upon, as does religion

—the fundamental proposition of the integrity of the individual; and that all Government and all private institutions must be designed to promote and to protect and defend the integrity and the dignity of the individual; that that is the essential meaning of the Constitution and the Bill of Rights, as it is essentially the meaning of religion. . . .

There are always witch-hunters and people who will gladly defame and assassinate the character of others without responsibility. That is why we have courts, and that is why we have rules of evidence. (N. Y. Times, February 5, 1947.)

Said the Chief Justice of the Supreme Court of the United States, the Honorable Fred M. Vinson, addressing the American Bar Association in Cleveland on September 22, 1947, after he declared that the most striking evidence of the confusion of the present was the misconception of the nature of man:

Under this view, man is a mere automaton incapable of sharing in the determination of his own destiny, bereft of dignity, capable of responding only to the grosser of materialistic motivations and irrational passions.

That such a creature is incapable of exercising the high privilege of self-government is obvious. Essentially this conception of the nature of man underlies all of the totalitarian doctrines of our day and, unfortunately, it underlies the thinking of some in our own midst who shrink from its inevitable and logical conclusion.

This conception contains the seeds of destruction. We must resist it and prove it fallacious.

After asserting that a world of peace and mutual understanding must be based on law and order, and that lawyers had been made disturbingly aware of a growing lack of faith

and respect for law and the legal process, the Chief Justice continued:

> But the challenge to the supremacy of the law has not been confined to the totalitarian regimes. In our own country we have seen evidence that there are those who have failed to realize that the only alternative to the supremacy of law is anarchistic chaos, or the reign of a personal dictator. (N. Y. Times, September 23, 1947.)

Said Justice Wiley B. Rutledge in his dissenting Opinion in the Supreme Court on March 6, 1947, on the John Lewis case:

> No right is absolute. Nor is any power, governmental or other, in our system. There can be no question that it provides power to meet the greatest crises. Equally certain is it that under "a government of laws and not of men" such as we possess, power must be exercised according to law; and government, including the courts, must move within its limitations. . . . No man or group is above the law. All are subject to its valid commands. So are the Governments and the courts. (New York Times, March 7, 1947.)

Said Justice Robert H. Jackson of the Supreme Court of the United States at the centennial convocation of the University at Buffalo on October 4, 1946, after condemning Nazi lawlessness and persecution and imprisonment of individuals and minorities without judicial inquiry:

> . . . Like other countries, we have bigotry and intolerance among majorities and minorities in our society and regrettable incidents as a result. But oppression is not an official policy of the Government and never can constitutionally become such because we have placed limitations on the measures which any majority or any official of a State or a Federal Government can take against an individual or a minority.
>
> We have created personal rights which exist not by grace of any current administration but as matters of

law. We have imposed upon every popular or legislative majority certain denials of power, and these constitute the protections for our individuals and minorities—not always complete, but certainly of great value. The enforcement of these restraints are entrusted to our courts, courts independent of the Executive and Legislature, courts not subject to popular choice, popular removal, or popular review. (N. Y. Times, October 5, 1946.)

Said the Attorney General Tom C. Clark, on September 15 in Washington addressing a national conference of Federal attorneys, that aliens engaged in communistic activities had no place in this country. He cautioned, however, that democratic principles must be observed in wiping out the "termites" . . . (N. Y. Times, September 16, 1947.) And on September 28 in Cincinnati at the National Exchange Club's convention, he pledged a continuing war on Communists, Fascists and other subversive groups. Further, Mr. Clark promised that:

> We shall not permit the entry into our country of any person for residence *of any person* who does not believe in our form of government. We shall deport every alien whose action contravenes our statutes and thus deprives himself, under our law, of the precious privilege of American security.
>
> But we shall do this in the American way, in a legal orderly manner. We shall not use Gestapo tactics of a Hitler or destroy the very institutions of liberty and justice that we have fought so hard to preserve.
>
> Those who deny freedom to others cannot long retain it for themselves—and under a just God they do not deserve it. We must share our freedom—exchange it—with others, lest we shall lose it entirely.
>
> The only strong, permanent state is the one which places all men on an equality before the law. Our way of life is founded on basic freedoms. It remains on the foundation rock of religion. Today the choice is simple

—shall we live in world brotherhood or in world chaos? (N. Y. Times, Sept. 29-47.)

And in the struggle for justice as a world force, the theme chosen for the Fifteenth Annual Forum On Current Problems of the New York Herald Tribune, on November 2, 1946, at the first session on "Justice For All" the Attorney General of the United States of America said inter alia the following:

> . . . ideals are of little worth unless they become living facts. The ideals of democracy and the actual living of them must be brought into harmony. Although the march toward full democracy has been long and difficult, it is not yet completed. It will be completed only when a living and growing America, full of promise, becomes an America in which the promise is fulfilled—a land of justice and opportunity for all. . . . .
>
> The ideals of justice for all will not be a living reality so long as the spirit of hate, hypocrisy, intolerance and fear—abiding in the hearts of some Americans—remains. Breeders, spreaders and carriers of hate, whether racial or religious, are un-American and strike at the very heart of the American Way of Life . . .
>
> The enemies of freedom all use the same techniques in their program of destruction. . . . We must not use their methods in our fight for justice for all. We must use the American techniques of due process of law. [!!!]
>
> All races and all colors make up America. All races, all colors, all faiths have helped to make the name of this nation a synonym for liberty to all peoples in the world. We are concerned today with justice for all from the standpoint of minorities. We Americans have an abhorrence at a lynching, at a racial violence, at the misuse or abuse of authority. [!!!—italics are petitioner's.] (New York Herald Tribune, November 3, 1946.)

The last quotation Petitioner served on the Attorney General in a letter of January 14, 1947, (A. 152) but was

never honored with a reply. All Petitioner can add today is that still Mr. Clark's "words and performances are no kin together." Maybe of course that letters written by "dangerous alien enemies" never reach the Attorney General's desk and that the Honorable Gentleman does not know and see what is going on under his very nose in the Department of Justice. Anyway, it is a fact that the FREEDOM TRAIN, containing 131 documents and flags marking the development of liberty in the United States, is sponsored with much fanfare by the Attorney General Tom C. Clark and endorsed by President Truman. In announcing the objectives of the trip, which started in Philadelphia on September 17, the American Heritage Foundation said:

> We shall announce as a basic credo that the essence of democracy is the sanctity of the individual. This precious heritage gives dignity to mankind. Men were born to be free, for only free men can walk the earth with dignity. We shall emphasize the fact that our nation holds secure for its people the integrity of the individual and the freedom to aspire to the fullest development of the human personality.
>
> Freedom of enterprise, protection of minorities, rights of labor—and all the rights and liberties we enjoy, under the Constitution and the Bill of Rights—rest upon this doctrine. We believe that no form of totalitarianism will be able to breach the bulwarks of our spiritual defenses as long as our country holds fast to this principle. Our objective is to make this concept the unshakable credo of as many Americans as we can reach through the modern techniques of education, advertising and group action. (N. Y. Times, Sept. 21-47.)

How much an intelligent education and above all how much the good *example from the top down* is needed, may be learned from the candid admission of a good Ameri-

can, who apparently is one of the few, the very few, who does not allow himself to succumb to self-deceit. Listen:

> America faces a great ideological crisis, because it has forgotten and neglected the basic principles upon which the foundations of this Republic were laid, Dr. Hardin Craig told the 154th anniversary celebration of the University of North Carolina here today.
>
> Dr. Craig, Professor of English, asserted that if communism or any other totalitarian form of government constituted a threat to democracy it was because Americans had been ignorant of and indifferent to the principles of democracy.
>
> Dr. Craig said that if this country were to enjoy the blessings of individual liberty, the people must give our political institutions constant attention and constant reformation. "In this matter we in the United States and I think also in Great Britain have been much to blame," he said. "It is possible for our enemies to point with truth to the badness of our political behavior, to our violation of our professed principles, to our neglect, indifference, ignorance and corruption."
>
> (New York Times, October 11, 1947.)

Deliberately, Petitioner quoted Senators, representing the legislative branch of the Government, The President and the Attorney General, representing the executive branch of the Government, and Justices of the Supreme Court, representing the judiciary branch of the Government, which together forming the American Government are endowed with the constitutional authority of power, the division of which the founding fathers knew as a system of "checks and balances."

It is a matter of record, that not only the above quoted but also other members of these three branches of the American Government, in one way or another, in solemn statements publicly acknowledged the validity of American principles, that all men have basic rights, that due process of law is the prerequisite of justice, and so on. Yet, in flagrant

violation of his own words, the same Attorney General signed an Order ordering—under the cloak of legality—the illegal deportation of a decent, law-abiding legally admitted alien resident arbitrarily branded "dangerous to the public peace and safety of the United States" to perpetuate his misery through more imprisonment and persecution in Germany after having deprived him already in this country of his liberty for nearly six years and five months for no good reason whatsoever—and all this without due process of law.

Maintaining a merely technical state of war, without any actual danger, years after the unconditional surrender of the enemy and after all hostilities have ceased, in order to carry on a pretence of a man being dangerous to the public peace and safety because of an alleged and not produced evidence, is, in itself, a fraud and an affront to the American sense of fair play. Because of this and of other facts, already in his *habeas corpus* petition of October 14, 1946, this Relator accused the Department of Justice among other things of fraud and criminal abuse of power (R. 1). For the "Government" to deport him now before giving Petitioner the opportunity to prove the fraud charged against the "Government" itself, would be an act tending to show guilt on "its" part and proof of his charges of fraud against the "Government," that is, some person or persons employed in the Department of Justice who are unknown to this Petitioner.

9. At this point, attention must be called to the all-inclusive relief bills introduced by Senator W. Langer to stay deportation of 207 German alien enemies at Ellis Island. The Congressional Record of July 21, 1947, page 9633, says:

DEPORTATION OF CERTAIN ALIENS

Mr. Langer: Mr. President, I ask unanimous consent to introduce for appropriate reference a bill to provide

for full and fair hearings before deportation of persons now or hereafter interned under the provisions of the Act of July 6, 1798, and so forth.

There are 207 aliens—Germans—on Ellis Island who have been ordered deported by the Alien Enemy Control Board because of a finding that they are detrimental to the interests of the United States.

It is asserted by many of them that they did not have a full and fair hearing as in other deportation cases.

There being no objection, the bill (S. 1690) to provide for full and fair hearings before deportation of persons now or hereafter interned under the provisions of the Act of July 6, 1798. . . .

And the Bill S. 1709 introduced in The Senate of The United States on July 24, 1947, reads as follows:

To provide for full and fair hearings before deportation or removal of persons now or hereafter interned under the provisions of the Act of July 6, 1798 (Stat. 577), as amended, relating to alien enemies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that no person now or hereafter interned under the provisions of the Act of July 6, 1798 (Stat. 577), as amended, relating to alien enemies, shall be deported or removed without full and fair hearing as in all other deportation proceedings.

However, according to reports from Washington the Attorney General, in a major change of policy, has decided to proceed with the removal of certain "undesirable" alien enemies despite the said bills, because delay of deportations owing to relief bills has been a matter of courtesy, not law.

In connection with the last developments regarding the alien enemies still held at Ellis Island, Petitioner may point to his letter to the acting Director of the Alien Enemy Control Unit, Mr. Charles M. Rothstein, Department of Justice,

Washington, D. C., which speaks for itself. It illustrates the present situation and the attitude of your Petitioner and reads as follows:

Mr. Charles M. Rothstein, Acting Director, Alien Enemy Control Unit, Department of Justice, Washington, D. C.
Kurt G. W. Ludecke, Room ORR, Ellis Island, New York Harbor.

September 15, 1947.

Dear Mr. Rothstein:

The New York Times of September 11 published on page 55 an AP report from Washington stating that the Department of Justice said that it was investigating the prolonged detention of about 200 enemy aliens at Ellis Island with the possibility of "deporting, paroling or freeing" those not involved in court proceedings; also, that the majority of the internees were interviewed recently by Senator Langer, Mr. Shoemaker and your good self, that further interviews will be held on September 23, and that following these, Messrs. Langer, Shoemaker and Rothstein would make joint recommendations to Tom C. Clark, Attorney General, on disposition of the prisoners.

In view of the fact, that I was one of the interviewed and that soon I am going to submit my certiorari petition to the Supreme Court, which granted my application for a stay of the mandate of the Appellate Court pending the consideration and disposition of said petition, I may be permitted to bring the following to your special attention:

Considering the merits of my case, it seems certain that the Supreme Court will not only accept my certiorari petition for consideration, but will also reverse the judgment rendered by the Appellate Court and the District Court against me or, in the alternative, will reverse the judgments and order a full examination and a public hearing in a proper court according to law, provided of course that the Supreme Court really is supreme, politically free and independent to administer justice without prejudice, and

is, and I trust will ever be, the protector of the fundamental principles of truth and right.

No doubt, that this time truth, reason and right are on my side, for I claim only what is true in the light of Natural and National Law, what is just on the face of the record, and what is right for reasons which seem to me unanswerable.

Though the Appellate Court affirmed the Order of the District Court dismissing my writ, the unanimous Opinion of the Circuit Judges, the Honorable L. Hand, Swan and Augustus N. Hand, is with regard to my person more positive than negative, for inter alia it says:

> "Ludecke, the relator-appellant, made an oral argument and submitted a brief, both of which have been interesting and moving. . . .
>
> "We see no reason for discussing the nature or weight of the evidence before the Repatriation Hearing Board, or the finding of the Attorney General for the reason that his order is not subject to judicial review. However, on the face of the record it is hard to see why the relator should now be compelled to go back. Of course there may be much not disclosed to justify the step; and it is of doubtful propriety for a court ever to express an opinion on a subject over which it has no power. Therefore we shall, and should, say no more than to suggest that justice may perhaps be better satisfied, if a reconsideration be given him in the light of the changed conditions, since the order of removal was made eighteen months ago."

Thus, it would appear that this Opinion while suggesting to the Department of Justice a reconsideration of my case at the same time, between the lines, (should the Department of Justice choose not to reconsider) invites me to go to the Supreme Court for a final decision, which has the constitutional power (Paragraph 1 of Section 2 of Article III of the Constitution of the United States) to inquire into the facts of the instant case so as to be satisfied that the issuance of the deportation Order does not involve a violation of my unalienable rights, valid in time of peace and war, nor an

arbitrary and unjust use of war powers when actual hostilities have ceased.

It would be an error to think that I am composing this letter in order to obtain or quasi to force an administrative release. The truth is, that I have been fighting this fight unwaveringly from the very beginning for the fundamental principle involved, not for the sake of my unimportant humble self. I am now approaching you, because it seems to me that an honest man striving for wisdom should always be ready to show his good will, when an opportunity offers itself, as it does in this case, to make it easier for those responsible for the injustice done to me to right the wrong with grace, even though I believe that this fundamental all important case should be aired thoroughly in the interest of justice.

Also (to quote from my Statement read before and left with the Alien Enemy Hearing Board in Chicago at my hearing on January 16, 1942), "it seems to me that the very unfair, unjust treatment, which I have suffered under American jurisdiction, is due to a misunderstanding, to a misinterpretation of my person, of my motives, and of my efforts, rather than to malice. At least, I like to think it is." And still today, after an absolutely unnecessary and unjustified imprisonment of five years and nine months, "I like to think it is," even though I have had to suffer the unending humiliations and indignities of prison life and now am branded a "dangerous" animal subject to removal.

But "blindly the wicked work the will of heaven." For and this I say with joy and satisfaction, instead of breaking me they made me stronger and pushed me closer to God thus helping me not only to win my Battle, the only worthwhile victory, the Conquest of Yourself, but also to develop and secure the only constant real home, the incorruptible, inviolable and indestructible inner Self, that nobody and nothing can profane or take away wherever I may be.

To return to the practical point at hand. The Appellate Court in the above quoted Opinion after stating that "on the face of the record it is hard to see why the relator should now be compelled to go back" observes that "of course there may be much not disclosed to justify the step."

As you well know by now, what your predecessors, the Messrs. Cooley and Ennis, have known all along, there was and there is nothing, absolutely nothing, that could possibly justify my illegal arrest on December 8, 1941, three days *before* there was a "declared war" (see Section 21 of the A. E. Act of 1798) between the United States and Germany, nor my internment for the duration of the war, let alone my deportation with the infamous stigma "dangerous to the public peace and safety of the United States"—that is, perpetuating misery because it means more persecution, more imprisonment and hardships in Germany. I say, there was and there is nothing, for the simple reason that I have never done or said anything on the ground of which any sane and honest man could and would condemn me as a dangerous animal.

And because that is so, practically all the questions put to me at the interview on August 11 with you, Mr. Shoemaker and Senator Langer, in connection with my case, were how old I was and whether I had belonged to an organization. . . . All else of what was said followed from the dialogue between Senator Langer and myself or from what I chose to say on my own initiative. However, in view of the fact that while waiting outside for my turn I overheard that my file was not in the Ellis Island office, I respectfully suggest that you arrange for my file being at hand at your next visit, supposedly on September 23, and call me again, so that I may explain or clarify to you, Mr. Shoemaker and Senator Langer, should there really be anything that would need explaining, or clarification, in order to clear myself entirely and definitely, once and for all.

At any rate, in the interest of this case, which I repeat is an all important fundamental case because of the fundamental principles involved and which, by the way, has all the stuff to grow into a cause célebre, I would appreciate indeed if you, Mr. Shoemaker and Senator Langer, would be good enough to give me a few minutes of your time at your next visit, so that I may submit something which I would like to say viva voce rather than put it in writing.

For the record, I wish to mention that when you were visiting our stables ORR at Ellis Island on July 31 and sitting next to Senator Langer on one of the "dangerous"

beds with us crowding around you, I heard the indeed Honorable Senator of North Dakota, after looking us over, say to you in an undertone: ". . . isn't it pitiful!" And you, a little embarrassed: ". . . yes, an awful mess . . ."

Yes, Sir, it is an awful, sorry mess, in fact, it's a disgrace, —unworthy of this great and generous land. Therefore, it was comfort, moral help, to see a Senator from Washington moving so informal among us, the dangerous animals, without a gun in his hand nor bodyguards at his sides, putting us at ease and treating us as human beings in a kind, a humorous and tactful way. That will never be forgotten!! Thank God!—there was at least one man in these United States, a man with insight, understanding, who had the charity, the moral courage and the will, to stand up and speak for us. Anyway, it meant a lot to me and reaffirmed my faith in the Great and the Good of this wide land.

In conclusion, may I take the liberty to remind you of the parts you read of a report in the Detroit Times of December 19, 1939, that is, almost *eight years* ago, in connection with the denial of my citizenship which the reporter, Milton M. Murray, in open Court rebuked as "a flagrant miscarriage of justice." Here are the pertinent quotations:

Wife a Witness

In court during the hearing and, briefly a witness in his behalf, was Ludecke's American wife.

"I know that his change of heart is complete," Mrs. Mildred Ludecke said, "or I would not be here to testify for him. I know the agony he has gone through. He is not a man who changes his convictions easily."

. . . . . .

Judge Tuttle questioned Ludecke on recent speeches, asking:

"You are preaching in America that the Treaty of Versailles is unjust?"

"Many Americans say so," Ludecke replied.

Praising the economic philosophy of the American writer, Edward Bellamy, Ludecke referred to economic ills, saying:

"No one can tell me God ordained so much misery." Judge Tuttle interrupted:

"Do you have the idea there are people hungry in this country? Or that people are shivering in the streets? We have been freest of any nation of such evils for a hundred years."

Quoting the President

"I quote the President," Ludecke said, "who referred to the ill-fed, the ill-housed and the ill-clothed.

"If you call me a revolutionary because I believe Edward Bellamy was right, you condemn not me but Edward Bellamy, a native American and a noted philosopher.

"If you call me a revolutionary you must remember Carl Schurz, a German revolutionary who escaped prison and came to America. Here he became an editor, a minister to Spain, a general during the Civil War, a senator and finally secretary of the interior under President Hayes. He was a revolutionary who found a new freedom and a new way of life.

Will Work His Best

"If the question of what I am going to do, if granted citizenship—or not—arises, I can only say: I shall continue to earn an honest livelihood as best I can.

"However, if freedom of thought and speech is permitted to one and denied to another—if for instance a man of German blood must become a coward and a liar to be eligible for citizenship, then I prefer to remain a man without a country, but a welcome burgher of the eternal realm of truth, rather than live the life of a hypocrite and a living corpse.

"To understand all is to forgive all. In this spirit of goodwill I shall be only too glad to shake hands with any honest gentile or Jew, black or yellow man, and help to get us a little closer to the goal of universal brotherhood.

"Please, your honor, do not see in the man now standing before you Hitler or Nazi Germany or the German-American Bund.

"Here stands Kurt Ludecke—nothing and no one else. Do not deny him the physical foundation for his spiritual aspiration."

It may interest you to know that a Jewish leader, an Associate Justice of the U. S. Supreme Court, the late Louis D. Brandeis, was one of the prominent Americans who endorsed Bellamy's philosophy and concept of a true democracy, that is, *the American* philosophy in *practical* terms, proclaimed in the immortal Declaration of Independence, which LINCOLN said "is an abstract truth, applicable to all and all times."

And it is significant of Bellamy's OWN WORLD, that he rejected violence of any sort and never once in *Looking Backward* and *Equality*, his masterpiece, used the word Jew. Yet his nature and practicable PLAN—so simple and so true—does solve the Jewish problem which to use the thoughtful words of a Jewish writer "is the Gentile problem grown acute." (The case against the Jew—by Milton Mayer, Saturday Evening Post, March 28, 1942.)

But—it must not be forgotten that "the great American prophet," the gentle Bellamy, most honest and wisest revolutionary of all times, also voiced this warning now fifty years ago: ". . . would you have blood, you have only to stand still and it will come up to your lips one of these days. We stand at the parting of the ways."

Please, dear Sir, receive this letter in the spirit it is written, the spirit of goodwill, and believe me that with my very best wishes I am

Sincerely yours,

KURT G. W. LUDECKE.

To: Senator William Langer, Mr. Thomas B. Shoemaker, Deputy Commissioner of the Immigration Service.

Registered. Return Receipt Requested.

Senator Langer, Mr. Shoemaker, and Mr. Rothstein did come to Ellis Island on September 23, but stayed only a few

hours to interview some alien enemy internees now out on parole. Petitioner did not see them and to date has not been honored with a reply by Mr. Rothstein.

It may well be that some people do not like the language Petitioner speaks in dealing with and speaking of his case. Therefore, he wishes to quote from a paragraph of his Statement for the Attorney General of December 17, 1945, which reads as follows:

> I have borne with patience the raw deal I have had ever since the unjust denial of my petition for naturalization in 1939; I have kept quiet during my internment, because I understand that in time of war every precaution must be taken to secure the safety of the land, and because I realize when suspicion and intolerance, violence and hate, are rampant that injustices and encroachments will occur; but now that the war is over I say aloud that an honest and intelligent effort should be made by all concerned to establish orderly processes without even a vestige of malice and vindictiveness.

Only after Petitioner realized that he was talking to stones and not to hearts, his indignation began to color his language. To ruin a man's married life, to ruin his livelihood, to hold him in prison day after day, week after week, month after month, year after year, all this for no good reason whatever, and then on top of this outrage to order his deportation—unjustly and cynically branding him a "dangerous" animal—to perpetuate his misery in Germany, again without due process of law but by means of falsehood and deceit, that is enough for any man.

Having lost everything but his self-respect and knowing in his mind and in his heart, that he is wronged and that his sufferings have earned him the right to speak as he does, Petitioner—with truth and reason on his side—thinks it is his duty to defend the integrity and the dignity of the individual, and being of German blood of which he is not

ashamed to defend the integrity and the dignity of the German people now lying prostrate at the mercy of the victors without hope for the future. Moreover, it is said that liberty is an indivisible boon which when threatened anywhere in the world is threatened everywhere else, and that he who fights for the blessing of liberty, at any time and everywhere, is fighting for the liberty of all.

10. Now, Petitioner is coming to the Brief for Respondent in Opposition to the Granting of the Petition for Writ of Certiorari in which the Solicitor General, the Hon. Philip B. Perlman, utterly failed to prove that Petitioner's argument is without merit. Quite to the contrary, Respondent's Brief serves but to emphasize the inescapable necessity, that the highest tribunal of this great land, the Supreme Court of the United States, should pass upon the all important and decisive question here involved.

Even the Solicitor General ignores the basic questions and contents himself to repeat former assertions and to continue to point to "precedents" such as the *United States ex rel. Schlueter* v. *Watkins* and *Citizens Protective League* v. *Clark*, although Petitioner has shown in his Petition and supporting Brief the invalidity of these assertions and alleged precedents apart from the fact that neither side of the above mentioned cases deals with the fundamental issue and the cardinal principle involved as Petitioner did in the instant case.

After all, simply to repeat over and over again that two and two make five because other people are saying so does not alter the fact, that two and two still make only four.

But there is one point in Respondent's Brief which calls for an unequivocal reply. It is the memorandum opinion of District Judge Tuttle (E. D. Mich.) mentioned in a footnote (RB. 2) [8] and produced in Appendix B of Respondent's

[8] Bracketed RB. with figures in this text refers to pages of Respondent's Brief.

Brief (RB. 12-15). A proper evaluation of the said Opinion requires a brief outline of the background leading to the making of this Opinion.

Relator had his first hearing in his naturalization petition on June 16, 1939, before the said Judge, the late Arthur J. Tuttle, in which Mr. Robert C. Wilson, then chief-examiner of the Naturalization Service at Detroit, presented the case and unsuccessfully tried to connect Petitioner with Fritz Kuhn (whom Petitioner had never met nor had had any connection with whatever at any time), the deported ex-leader of the no longer existing German-American Bund. Petitioner's immediate and energetic objection caused Wilson to back down and pass the case on to the Judge "without recommendation and prejudice pro or con." It was then, at this first hearing on June 16, 1939, that Petitioner introduced his book "I KNEW HITLER" as evidence and left a copy with the Judge. And the hearing was continued for further investigation.

After waiting months without hearing from the Court Petitioner wrote a letter to Judge Tuttle, dated September 11, 1939, some pertinent parts of which are quoted below.

Your Honor:

> "Enclosed article in the Detroit News of September 10 asserts that 'Ludecke Citizenship Rests on Reading of Book' and that 'the wait is indefinite, since Judge Tuttle admits he has read only a few pages of the 814-page volume.'"
>
> "This may be idle newspaper talk. . . . I take the liberty of writing this letter which I hope will simplify matters. . . ."
>
> "I want to make it perfectly clear that I am not the promoter of any individual or political group here or abroad. I do my own thinking and am absolutely independent of spirit. . . . it is true that my political life is ended. . . . I am definitely not concerned with politics. . . . I have no office, no connection with the

past; I am not a propagandist in any form as stated in my interviews with the Detroit News of October 23, 1938, and the Toronto Star Weekly of October 29, 1938, which also should be in the file of my case. In this connection I should like to recommend reading of the enclosed copies of my letter and Statement of January 25, 1939, I sent to the Naturalization Service.

". . . my book bears evidence that I have always opposed, as early as 1927 when I still was an active Nazi, any Nazi organization in America subject to any influence from Nazi Germany (see pp. 292-93; 318-26; 410-12; 541-2;) and that in March 1933 I finally succeeded in bringing about the dissolution of the Nazi units in the United States by official decree from Nazi headquarters after Hitler's rise to power. (See pp. 326, 585, 587, 588, 797-99.)

"Actual developments which I predicted many years ago are conclusive proof that the analysis presented in my book is correct.

". . . the whole tenor and structure of my book clearly indicates that I have outgrown my Nazi life and am striving to remake and readjust myself for a new existence. I do not hesitate to admit that my Nazi experience has cut very deep. But it is equally true that I am ready today for a new life, physically, emotionally, mentally and spiritually.

"The chapter 'In a Mental Strait-Jacket' ends my personal story after my escape and final arrival in New York the night of June 30, 1934, when headlines screamed the news of the Blood Purge. Well, that chapter should close with the invocation as originally conceived: God, you saved my body, now save my soul!

"My prayer has indeed been answered. The above mentioned interviews, given already a year ago, clearly show the direction and development of my inner self, after a long and bitter struggle to reassert myself. Now, at last, the battle is won. . . ."

". . . Therefore, if it pleases Your Honor may I request an early date for another hearing of my case."

And here are some paragraphs of the Statement mentioned above copy of which was enclosed in the just quoted letter to Judge Tuttle:

". . . My present attitude is nowhere revealed in the book. [I KNEW HITLER] It would have been impossible to do so because, as I have stated in the preface, the end of the book was the beginning of a new life.

"Only superficial reading or misinterpretation of my work could lead an ignorant or prejudiced reader to the false conclusion that I am still a Nazi.

" 'The whole tenor and composition of the story as well as the definiteness of my attitude expressed in the preface and elsewhere should convince any honest reader of my objectivity and independence of spirit, or at least of my having made an earnest attempt to be objective and spiritually independent.

"My book is the soundest presentation as well as the strongest and most convincing indictment of Hitler ever printed, because of its veracity and frankness based on my intimate knowledge of Hitler himself, of the structure of the Nazi party, and finally of Nazi mentality, or better of human nature itself.

"Moreover, my criticism of Hitler, and the unflattering portraits I have drawn of Goering, Goebbels and Himmler alone would suffice to put my head under the executioner's axe should I ever show my face in Naziland as long as those men are in power.

"On the whole, there can be no doubt that the publication of my book in itself signifies a complete break with Hitler and has irreparably burned my bridges with Nazi Germany. (In this connection I point also to the enclosed copies of the Chicago Sunday Tribune which published recently abridged parts adapted from "I KNEW HITLER" in a manner which sensationalized the sensational.)

". . . . The pages 292-3; 304-5; 317-26; 410-12; 541-2; 585, 588; 797-9 show clearly my understanding attitude towards America even at a time when I still

was an active Nazi. I realized even then that America had a destiny of its own which should be determined by Americans without any interference from abroad or influence which could disturb the solution of the American problem of unity.

". . . Aside from the inner necessity to write the story off my chest I was governed by the urge to write an honest book that might serve as a lesson to America. From the beginning I was well aware of my vulnerable position; for telling the truth put me between Scylla and Charybdis, or, as you say, between the devil and the deep sea. Neither the outspoken Nazi nor the outspoken anti-Nazi like my book. But in writing the truth I hoped that it would help to teach America not to repeat in this country, blessed by nature and geography with two oceans separating her from Asia and Europe, the mistakes which have brought the peoples across the Atlantic to the brink of disaster.

"The claim that my book is 'anti-Semitic' and therefore tends to stir racial hatred is dishonest and unfounded; it can come only from Jews who suffer from 'persecution hysteria.'

"Needless to say it is impossible to explain Hitler and Nazi-land without mentioning the Jew, because he is a part of the problem. But I have dealt with the Jew only as far as he is pertinent to the story as an explanatory factor, and then only on the basis of historical fact. After all, one cannot change history merely to please some unrational people.

"Hatred blinds and destroys. My new faith forbids me to hate. And I do my best to serve my fellow man. Since I set foot again on American soil, in 1934, I have struggled and groped for the truth. Now, at last, having reached inner security I am in earnest to do the right thing in the right way regardless — the consequences to my physical self.

"My attempts to be constructive in my statements and in my criticism may be seen in the enclosed clippings. While they do not always quote me exactly, they are accurate on the whole.

"To be specific, I believe in the necessity of striving for a truly functioning democracy, politically and economically, socially and spiritually; that in this slow process of evolution, i. e. the gradual amalgamation of the different human ingredients on the American continent into an organic whole, America is still in the first stage, namely the crystallization of its people around a central idea which is Americanism; and that therefore all nationalities, for instance, the English and German, the Italians and Poles, including the Jews, must become Americans, in spirit and action.

"Behind the oft quoted words of the Great Emancipator "Government *of* the people, *by* the people, *for* the people" lies a world of thought.

"In substance, they mean: A government consisting *of* true Americans elected *by* the American people as their wisest representatives to govern ably and justly *for* all of the people.

"This is, basically, my concept of Americanism."

January 25, 1939.

The second hearing took place on December 5, 1939, three months after the beginning of the Second World War, when the psychological mobilization against the Nazis as well as the Germans was already in full swing also in the United States—a significant fact which the late Judge Tuttle exploited to the full.

His Honor did not deport himself as a judge giving Petitioner at least the benefit of the doubt, no—he acted like a ruthless prosecutor treating the bona fide applicant like a criminal defendant, abusing him, ridiculing him, insulting him, provoking him. But Petitioner managed to control himself and avoid "contempt of Court" because a certain stubbornness and psychological curiosity as well as other reasons mentioned later prompted him to suffer the ordeal, though several times he nearly bursted out and withdrew his application. After some 8 hours (a short recess for lunch included) of this amazing performance in a large

court room packed with people, the hearing was adjourned to December 18, 1939.

It is a matter of record that Petitioner prepared a Brief for the third hearing which he read in Court and left with the Judge.

The exact copy of this Brief as delivered in Court and left with the court is as follows:

KURT G. W. LUDECKE

Re: Petition for Citizenship

BRIEF

for Judge Arthur J. Tuttle read in Court and left with the Judge at the hearing on December 18, 1939, in Detroit.

Your Honor: At the end of the previous hearing, December 5, you said that you would give me a chance to prove that I have changed, that I could bring a lawyer,—or two if necessary, to prove my case.

I decided to be my own counsel. I have no money to waste and, after all, I know this case and the issues involved far better than an attorney could possibly have learned them in the time limit of only twelve days. Besides, and this is important, it seems to be less a case of the letter of the law than a case of understanding, of psychology, of justice.

May I begin with respectfully making a request, first, that Your Honor please show indulgence should I violate customary procedure because I am not familiar with court formalities; and second, I beg your Honor to listen to my Brief with an open mind, because all my efforts are in vain should Your Honor, if I may say so, persist in the *hostile* attitude shown at the last hearing.

After my experience on December 5 here in Court I seriously considered to withdraw my application for citizen-

ship. But after earnest contemplation I determined not to dodge the issue, for three reasons:

First, I owe it to my wife to do all I can to make it possible that I provide for her better than I have been able to do in the last few years. It is evident that a legal status is imperative, if for nothing else than to earn an honest livelihood. In these times, a man without a legal status, without a country, without a passport which makes it impossible for him to move about, and, on top of that, branded as an undesirable, is practically condemned to death. Without doubt for me citizenship, as seen from almost any angle, is a question of "to be or not to be."

Second, it seems to me that here a principle is involved that is of greater importance than my personal little self, a principle *per se* which, ignored or observed, might serve as a precedent.

And third, I must do all I can to correct the false impressions Your Honor has of me and thus prevent a *negative* decision of this Court, which in my opinion would be a great wrong done to a bona fide applicant.

Apparently, the Court's intention is to base its reasons for denying me citizenship on the following two points:

First, the Ludecke as presented in his book is a bad man, an egotist, a gambler, a revolutionist; in short, an unlawful personage who had never done a good thing in his entire life; and second, in parallel to the leopard who does not change his spots, the present Ludecke is still a Nazi and revolutionist at heart, altogether an ambiguous, questionable quantity, therefore a potential trouble maker and undesirable nuisance, unworthy of becoming an American citizen.

My job is to make the issue and my position so crystal clear that an *honest* interpretation admits of only a *positive* decision.

Claiming that here two Ludeckes are under consideration, namely, the *Nazi* Ludecke up to his imprisonment in 1933, and the *new* Ludecke, the ex-Nazi, after 1933, it is necessary, right at the outset, to establish the important fact, I say important legally and psychologically, that I have twice taken out my first citizenship papers. The first time was in August, 1927. However, my first application for citizenship lapsed in 1934. In other words, the *first* Ludecke, the Nazi crusader, forfeited his rights to apply for his second papers. And then, as if following the inner logic of this development, the *new* Ludecke, the ex-Nazi, took out his *first* papers in 1934, filed his petition for naturalization and now is standing before Your Honor pleading his case.

Therefore, technically at least, my present petition has nothing to do with the first application running from 1927 to 1934 of a Ludecke who is dead. Ergo, the question could be raised whether the present petition should not be decided wholly on the merits of the case dating from the second filing of my first papers in October 1934.

However, I do not wish to insist on technicalities.

In view of the highly controversial nature of my case I did not wish to embarrass anyone by asking him to testify in my behalf. But here is an important letter which I received only Saturday night after I had finished writing my Brief. It is the more valuable because it was *not* solicited by me. I produce the letter addressed to Your Honor as evidence because it has weight and backs up what I am going to say.

The writer is Dr. Pieter Roest. Excluding my wife he is better qualified than any one I can think of to pass judgment on me, a man of highest quality and integrity, the author of this precious little book: A Life View for Moderns.

I quote . . . . *(The said letter is Exhibit II and appears in the Appendix to Relator's Certiorari Petition, pp. 83 and 84.)*

I proceed with my Brief.

In order to avoid confusion, I shall refer to Ludecke, the Nazi crusader who died in 1933, as the *late* Ludecke, and to the living Ludecke as the *new* Ludecke.

It seems to me that I must show, first, that the late Ludecke, as revived in my book, all told was not such a bad egg, that on the contrary, in spite of his many faults, errors and weaknesses, he was a genuine revolutionary idealist who, on the one hand, subjecting everything including himself to his cause, has done his share as best he could to prepare the conditions for the resurrection of prostrate Germany; and who, on the other hand, has had to pay heavily for the rich experiences he was allowed to have.

And second, I must show *that*—and *why*—the Ludecke of today has of necessity become a *new* Ludecke, a transformed personality who should be given the privilege of American citizenship.

I begin with part one, the *late* Ludecke.

First, Your Honor declared that the late Ludecke was merely a gambler, a job hunter, a money seeker, a cheap selfish opportunist.

My answer: Gambler! First, I was never a gambler at heart, as I state explicitly on p. 20 and 21 of my book; second, that episode happened twenty-seven years ago and was of so short duration that it was merely one of the many worldly experiences which certainly brought me no nearer to heaven but may have helped me over many a hurdle here below.

Before I proceed, I should like to emphasize that one may read into a book what one wants to, and give an interpretation exactly opposite to the meaning the writer wanted

to convey, just as wishful thinking may lead to false estimates and interpretations of people and situations. Passages taken out of the context, if the whole is lost sight of, must give false impressions and wrong conclusions. My book must be taken as a whole because it is a unit organically conceived.

Was I a job hunter, a selfish opportunist?

"I Meet Hitler"—the first chapter of my book, clearly shows that the late Ludecke in joining Hitler in 1922 was moved mainly by emotion and instinct, and partly by reason, but not at all by self-seeking.

"I had given him my soul" is the thought which ends this first chapter and with it the late Ludecke surrendered to the cause his money, his time, in short his whole personality whatever it was worth.

At that time I was not poor, as were most of Hitler's followers then and later. On the contrary, I had plenty of money, as clearly stated in my book. I certainly did not join the Nazis to make a career for myself. At that time, in the early days, to join Hitler was a risk, especially for an intellectual with means. It meant a clear break with the so-called social life, with your friends and often with your family. (See p. 100.) Americans, 4,000 miles away, have not the faintest notion of the embittering hell of those years. To understand, one must have been part of it.

If Your Honor should not remember those parts of my book which substantiate this statement and did not find time to read the manuscript of my speech I have sent to your office a week ago, I can quote from both if necessary. (See page 15 and 22 of speech.)

May I ask Your Honor if you have read my speech? (He replied, "yes.")

Anyway, all the travelling I did for Hitler [before he came to power in 1933], inside and outside of Germany—in Hungary, Italy, France, England and America, I have paid out of my own pocket. And more than that, I have given money to the movement, as well as to Nazi individuals, all this running up to thousands of dollars, a lot of money in Germany in those days.

The only recompense I have ever had was a meager one thousand mark note which Hitler gave me for my expenses, in Munich, 1932, when I was commissioned to return to Washington as the representative of the Party and the party press. And the only money I ever received from the Party was the relatively small sum of about $500.00 a month, with which I had to maintain my office and myself, for a few months, from October 1932 to February 1933. All this is told in my book, pp. 553-54, in the chapter, "Distant Thunder."

It is equally false to call the late Ludecke a job hunter. The exact opposite is true. In the same breath, Your Honor called him a constant revolutionary. It is evident that the one excludes the other. A revolutionary is not, cannot be a job hunter, a cheap politician.

It is a matter of record that it was Hitler, not I who asked me to go to Rome in August 1923 to act as his representative with Mussolini, and to go to America in the interest of the movement, as can be clearly seen from the credentials bearing Hitler's signature, which are reproduced in my book between pp. 140-41, and pp. 190-91.

If there is still any doubt whether the late Ludecke has been a cheap job hunting opportunist, may I point to the touching letter which my wife sent to Hitler after my imprisonment. She wrote this letter while entirely in the dark about what was going on, having been for months without news from me. This is reproduced in the appendix [of I Knew Hitler], pp. 797-99. (Quote . . .)

I think that settles this point.

Your Honor accused the late Ludecke of duplicity, dishonesty, and of following the doctrine that "the end justifies the means."

My answer: Anyone familiar with the backstage of politics in Germany or elsewhere knows that politics is a hard game, and will remain a sorry business as long as certain conditions prevail. But that does not mean that no honest man should go into politics. On the contrary, if more honest fearless men entered the arena, the dirty game would soon become clean.

And the *early* [Nazi] movement in Germany was in fact a violent reaction against irresponsible politicians, and against the entire system which was responsible for breeding such politicians. The late Ludecke certainly approved of this aspect of the battle fought by the activists of the Nazi party. Unfortunately, even these were by force of circumstances drawn into the vortex of "dirty politics."

However, one must bear in mind that the late Ludecke specialized in foreign politics, and after 1923—I say as early as 1923—had nothing to do with the internal development and domestic policies of the Hitler party. Nor did he have any influence whatever on the moulding of Nazi thought and the shaping of the Nazi system, for the simple reason that except for two short visits he was continuously outside of Germany from August 1925 until March 10, 1933, 39 days after Hitler's appointment as chancellor. And of the twelve months he spent in Germany in 1933-34, he spent eight and one-fourth months in prison and concentration camps, *because* he opposed certain developments which had taken place during his absence from Germany. [That at a time when the American Government officially recognized and did business with the Hitler Government.]

This is a matter of record, which is clearly explained to Your Honor in my letter of September 11, 1939.

Moreover, the late Ludecke, who returned to Germany in July, 1932, when the entire nation was in suspense over the final struggle for power suffered great disillusion over certain developments within the party. The inner conflict which then took hold of the late Ludecke is progressively revealed in his story. I may refer here to pages 422, 466-7 and 539-40 and quote from them, with your permission.

Point two. Now, is it true that the late Ludecke was dishonest and cheated his employer?

No, it is not true. When he was a travelling salesman, the late Ludecke did more than his duty; he sold above his quota. He worked hard from 9 o'clock in the morning to 11 at night during 4 or 5 days of the week. Of the salesmen hired at the same time as he was, he was the only one who was kept. He was not fired, but left of his own accord. What he did with his remaining well-earned time was his own affair.

The late Ludecke's work for the German publishing house he was connected with when coming to Canada in 1925 was on a part time basis only. Besides, the head and owner of the firm was a Nazi sympathizer also [at that time.] The incident was only mentioned in the book in passing to illustrate his difficulties and complications at the time. To hold minor occurrences like that against his character is searching for things which are not there and trying to pick flaws in everything he did. This becomes clear if one reads the whole passage. (p. 293.)

Your Honor showed indignation over the Nazi's use of the maxim: *the end justifies the means.* As far as the late Ludecke is concerned, Your Honor can include him only until the beginning of 1933, because he had nothing whatever to do with what happened under the Hitler regime.

But, as already explained, due to his absence from the country he had nothing to do with the development of domestic policies since 1923.

In fairness to the late Ludecke, it should be remembered that, with him, the "end justifies the means" policy held only so long as the means employed did not jeopardize the good end, namely the liberation of the German people. As soon as *ignoble* means were employed which made the Hitler movement so vulnerable as to jeopardize its very idea and the future of the German revolution, that *same Ludecke went into opposition, knowingly at the risk of his career and of his life.*

This has been fully recognized by Josef E. Gellerman, critic of the *Washington Post*, whose intelligent review of December 3, 1937 [of I Knew Hitler], I quote: ". . . . a literary achievement. They are written by a man who is German to the Americans, and an American to the Germans, who is at home anywhere and everywhere and who has now confined his superior talents to an inside story of Hitler's rise to power . . . . Kurt G. W. Ludecke is undoubtedly a gifted writer, a student of human nature with a mature knowledge of social and political currents stretching from the Baltic to the Pacific Coast, from Mexico to Berlin. His story is magnetic, filled with human interest, enlivened by histories, philosophical excursions and tingling with a clever, sophisticated sense of humor . . . A strong National Socialist, he is not a Hitlerite. This conflict of placing the idea of national socialism above the idolatry of the person of Adolf Hitler caused his ultimate downfall and banishment from the circle of the mighty within the leader's group. . . .

Undoubtedly Ludecke knows Hitler. Did Hitler know Ludecke? . . ."

Moreover, my personal attitude concerning "the end

justifies the means" is clearly expressed in unmistakable language in a passage of my speech (p. 23) which is verbally taken from my book. (p. 788). Quote . . .

> "The corruption of our times and the mendacity of his opponents helped, of course, to make Hitler what he is. But while he still strove for the highest aims, he himself became corrupted by his willingness to employ ignoble means. Though dishonesty may be an asset to a professional politician and ambitious demagogue, it is incompatible in a man who pretends to embody all the requisite virtues of a leader predestined to remake the German people on a new spiritual foundation. If Christianity must be reformed, if religion must be brought to the level of the scientific findings of today, if there is no room for the Christian Cross and the Swastika Cross in the same realm, then the struggle must be waged with honesty and truth. Christianity may be conquered only by elevating the moral plane of the people and not by lowering it.
>
> ". . .
>
> "The fraud, the inner contradiction in Hitler, in the last analysis is the underlying conflict with which the whole Hitler system is diseased. It is this great deception, more than anything else, which has made Hitler vulnerable and has discredited his cause in the eyes of the world. History cannot and will not acquit him of guilt."

[Nota bene, this was written and published in 1937, at a time when Hitler's accomplishments regarding the physical rehabilitation of Germany were undeniable and remarkable, years *before* Hitler turned into a monster of self-deceit and crime.—Comment by Petitioner while copying this brief on October 22, 1947.]

I emphasize, first, that a copy of my speech in question has been in the hands of Mr. Robert C. Wilson of the Naturalization Service since March, 1939, second, that another copy of this speech was sent to Your Honor with my letter

of December 9, 1939, and third, that a copy of my book "I Knew Hitler" has been in the hands of Your Honor since the first hearing on June 16, 1939.

I proceed to point three. Your Honor made the assertion that the late Ludecke has never done a good or useful thing in his entire life.

My answer: It is very possible that you and I have different ideas about values and life as such and therefore differ in our interpretations of realities, of good and useful things, yet both of us basically believe in the same decisive truth, that there is a God, a SUPREME BEING.

In my book I relate only what is pertinent to the story of the Nazi in connection with the large canvas I tried to paint. Also, the purpose of my book was not to tell the world how bad or good was Ludecke, the Nazi crusader. The purpose was this, as stated in the preface to the English edition of my book:

> "Here is a story from which a lesson can be drawn. Written from life, my ambition was to create a picture of the development and growth of Hitler and the Hitler system, giving a background which would help to explain the Hitler of yesterday, today and tomorrow, and at the same time reconstruct the thoughts and emotions of my former self, in order to reveal for all to see the process of progressive disillusionment of a Nazi revolutionary activist."

In fact, many competent people have realized that my book is, among other things, *a vital lesson for America.*

Returning to the questioned "goodness" and "usefulness" of the late Ludecke, may I say that the surrender of a person's whole life to work for a cause is, in its intent and purpose, a good deed, a fine impulse.

I should like to quote here from a passage of which Your Honor quoted only that part, in the last hearing, which might speak against me. (Quote pp. 292-293 etc.)

That showed faith and purpose.

But at the last hearing Your Honor insisted on a specific answer. I was a little puzzled for a moment. Everything else seems so small in comparison to one's willingness to give his life for an idea.

When I came to, I remembered that I had anticipated the possibility of such a question, and produced a reference work (ASHWELL'S WORLD ROUTES) of some 900 pages which I placed on Your Honor's desk. But it was dismissed with a gesture of contempt and the remark that the book was just another travel guide—one of those advertising stunts anybody could compile. And that was that.

Now the truth is that I and two assistants labored for a full year over the work, often twelve hours a day, week-ends included. It is a travel guide by water, land, and air, a reference work meant more for the trade than the public, containing a wealth of information. Moreover, the book was not published by the trade, but by a regular publishing house, which spent $25,000 getting it out.

It is very difficult to get advertising for a new untried vehicle, and the advertising manager of the publishing house was able to secure but very few contracts. So on top of the editorial work I had to go after the advertising, and about 83% of it I obtained myself. And here are some letters written to me by leaders in the travel trade praising the work. (Show letters.)

I explain this in itself unimportant matter because of the way in which it was treated in my last hearing.

In the last hearing, Your Honor touched even the field of Hitler's foreign policy as a point against me because the late Ludecke suggested to Hitler that he consider an understanding with Soviet Russia.

My answer: I cannot see what this point has to do with my eligibility for citizenship. However, a German policy of understanding with Russia did not originate either with

Ludecke or Hitler. Frederick the Great and Bismarck, already realized its importance on account of geographic, economic, and geopolitical reasons.

And, why blame Hitler alone? He would be a fool to put Germany between a pincer and risk another war on two fronts. England tried for months to close a military alliance with Russia in order to crush Germany once and for all. Is it right of the English, on the one hand, to condemn the Bolsheviks for attacking Finland, but, on the other hand, go to Moscow for a pact which would help to crush the Germans?

Now, to point four. Your Honor made the statement that I had criticised in my book everything and everybody, only to say an hour later with equal positiveness that nowhere had I criticised Hitler and the Nazi Party, observations which seem to cancel each other.

My answer: I have taken the trouble to go through the book with a special eye to this question. I found that the sketches or pictures I had drawn of about 40 people are positive, some definitely sympathetic. If Your Honor wishes the list of names, here it is.

In particular I beg to correct the impression Your Honor had that I repeatedly referred to the Franciscan monks in a disparaging fashion. The exact opposite is true (Quote pp. 294-6). The picture I have given of the monks and the atmosphere of the cloister has poetical and spiritual qualities because the experience touched the emotional depths of my being and never fails to move me whenever I happen to think of it.

So much for criticising everything.

Did I criticise Hitler? The very dedication of my book, printed in capital letters on the frontispiece "To the Memory of Captain Ernst Roehm and Gregor Strasser and Many Other Nazis Who Were Betrayed, Murdered and Traduced in Their Graves" would have been sufficient to

put my head under the executioner's axe. In the text, praise alternating with blame runs through the entire length of the volume, the criticism of Hitler, the Nazi bigwigs, and of the Party being often very sharp and biting. In fact there are entire chapters full of condemnation.

Like groups in any land, the Nazi organization had its incongruities, contradictions and contrasts. There were horrid Nazis and decent ones, intelligent and stupid ones, brutal and even gentle ones, there was tragedy and drama, boredom and fun; in short, written from life, my story rises and falls, often the sublime one step from the grotesque.

The merit of my book is that it is an *honest book*. And naturally, Hitler, for instance, imperfect like any human being, emerges here alive, the man, not the demi-god and not the monster. [Nota bene, this was said in 1939.]

Certainly, there must be criticism of Hitler in my book, or the Chicago Tribune, decidedly not a pro-Nazi paper, would not have serialized it in nine installments. (Produce title page.).

Still more convincing is this: Of all people the English and the French would not, at the present time think of propagating flattering pictures of Hitler and his party.

Well, here are two letters, written *after* the declaration of war, one from my publisher in London, and the other from my literary agent in Paris, which prove conclusively the point in question.

The letter from London proposes the publication of a cheap abridged edition, and the projected sale of 3,500 copies of my book to an English book club, a transaction which has recently taken place, to be exact, October 23, 1939.

And only last week, I received word that a French publisher is seeking the rights for the French edition, this in spite of the almost total stoppage of book-publishing in France, due to wartime economies.

You will agree, Your Honor, that there must be substantial criticisms of Hitler in my book, otherwise neither a French nor an English publisher would consider to publish and distribute it, with their nations engaged in a war to "crush Hitler." (Show letters.)

As for the late Ludecke, I think enough has been said and we should leave him in peace. Summing up, may I say that altogether he was not quite the contemptible character Your Honor has chosen to make him appear. Although a revolutionary and a crusader, he only followed the natural impulse of every red-blooded man wishing for the independence of his country as once the Americans did in 1776.

Part II

Now, I come to Part II—the *new* Ludecke whose eligibility depends on the answer to the question: is it true that the man who stands before you is a new Ludecke who has broken with the past?

The book "I Knew Hitler" reveals nothing of the new Ludecke who tells the story of his Nazi ego, his struggle and his end. The autobiography finishes with the arrival of a problematic Ludecke in New York on the very night that headlines screamed news of the Blood Purge, June 30, 1934.

The Nazi Ludecke did not die a sudden death. He was dying over a long period of time, while the new Ludecke was slowly emerging. Time limits forbid me to go into details of this process. Suffice it to say that a man of the type of the late Ludecke either perishes or struggles through to a new life after disillusions and experiences, humiliations and despair such as he suffered.

Before I proceed, I want to recount an experience which made me realize that I *was* to live a new life, a decisive experience I have not mentioned in my book.

I must guard myself against the accusation of exhibitionism if I cut deep to explain myself. After all, much is at stake and it was *not* I who has sought public discussion of most intimate questions regarding my person.

After over three months' imprisonment, in October 1933, bad news reached the late Ludecke in the Brandenburg concentration camp, as related in my book on page 708. He was called before the camp commander who told him that an order had been received from the Gestapo, the State Secret Police, that Ludecke was not to be allowed to receive visitors, and that all his mail must go through the Gestapo.

It was an ominous answer to the pleas sent through the Commandant directly to Hitler and the two Nazi authorities most qualified to intervene in the case. He, the late Ludecke believed then, and I believe still, that Hitler himself was behind that order.

Now the late Ludecke felt the seriousness of his position to his fingertips. If he wanted to leave this or any prison alive, he would have to get busy. But before he could concentrate all his being on the one thought of escape, something happened.

Escape was a problem. He had not only to get himself outside the prison, but safely over the border, hundreds of kilometers away, and then to the United States. He had little money, and that was out of reach in the bank; he had no passport, and his re-entry permit for the United States was to expire on February 21, 1934.

Escape would be worthwhile only if he could start a *new life in America*. Without the possibility of a *new life*—this I state explicitly on page 713 of my book (quote)—he would have preferred suicide, for he had no wish to moulder in the horrible life of an unwanted refugee in Prague or Paris. He anticipated clearly that a man beset by the innumerable difficulties encompassing an exile can hardly remain independent, however high his personal integrity.

Thus, cool-y analysing his physical, emotional and mental problem, he always arrived at the same seemingly inescapable conclusion: his was a hopeless case. Even should he reach America, here also he would find himself between the devil and the deep sea, defeated and dying under self-torturing frustrations, unable to save his wife from the wreckage of his own life. No, seen from every angle, it looked hopeless. So he decided to kill himself.

Gradually he overcame the resisting forces, the instinct of self-preservation, the mental and spiritual resistance, the emotional unwillingness, and the physical fear. And one night, after finishing some letters, he strangled himself.

But it was not to be. He had only stifled his consciousness, not life itself. After hours of insensibility, he came to.

I shall refrain from disclosing more of this unforgettable experience. It must suffice to say that I awoke with a new lease on life. A force stronger than I had intervened to save me.

And almost instantly with the awakening, an idea flashed through my mind: I had a story to tell, which, once written off my chest, would make me free for a new life. I felt as though God had spoken to me. And I pledged myself that should I be spared I would live a new life and try to be a servant of truth.

Gradually my thoughts crystallized. Already in prison, the foundation for my book was laid.

It was this experience, this—for me, miraculous resurrection which was the source of new hope, the will to live, the strength and the patience to work for my escape and to go through with it.

Of course, the final liquidation of the late Ludecke was a process of some duration. The revolutionist and Nazi crusader had nine lives like a cat. There still may be a vestige of him that is not wholly exterminated. That's why I called the chapter closing the personal story of the late Ludecke

"In A Mental Strait-Jacket," and mentioned in passing that "I was indeed two men, each trying to annihilate the other." (pp. 730-1 and 752) Quote . . . ; also from my letter to Hitler, p. 753-54.

It may well be that these most involved psychological developments should have been presented with more clarity than has been done in this and other chapters. But I think in the light of the explanatory and supplementary comment I have given today, it should be understood that I have the right to speak of the *late* Ludecke and the *new*.

After all, a book can give only so much, and not more. And when I was writing my story, I did not contemplate to what an extent I would have to dissect my personal and intimate self in order to convince the authorities that I am eligible for citizenship.

It also must be remembered that I had to write my book under terrific pressure. At times I did not know how to satisfy my hunger or pay the rent of my room. There were moments when my physical condition was so low and my mental state so confused that it seemed impossible to go on and try to untangle the mess of the past. From a literary viewpoint, my problem was not how to stretch the story, but what to choose from the overwhelming material at hand.

Ah, the reader only sees the finished product and does not realize what it means to write with the sweat of one's brow and the blood of one's heart; day in and day out to fight the same battle, to glue the seat of one's pants to the seat of one's chair and try to express the inexpressible. In those days I learned why there are writers who, relaxing, appear crazy to normal people. They have spent all they had in discipline and will on their work.

In short, as I have said in the preface of my book:

> "The writing of my story, in a language not my own, has condemned me to re-live my Nazi life—the past—

for two long years, an agony which often filled me with despair.

"Though moods of maudlin self-pity, sharp self-criticism, or cynical contempt of all accepted values made it difficult sometimes to remain within the boundaries of common sense and maintain the right proportions, I have made an earnest effort throughout to be honest."

Besides, towards the end, when mentally exhausted, I was so pressed for time that instead of doing it in leisure from the manuscript, the final editing had to be made in a rush from the galley proofs, when every insert or change means resetting, time and money.

This explains why, for instance, the passage Your Honor denounced at the last hearing is not sufficiently clear, since it led to a misinterpretation on your part. I mean the last paragraph of pp. 506-7. (Quote)

If taken out of the context it may be misleading, but in connection with the whole it becomes clear that I mean Ludecke the Nazi "committed one of the greatest stupidities of his life."

Moreover, in order to give a true picture, I had at times to put myself in a half-trance. And certainly, at such moments for instance, living it all over again, I rebecame the Nazi. Sometimes I would discover myself talking aloud, or laughing, or with tears streaming down my cheeks.

Being my first book, I did not expect it to be a masterpiece. "Kein Meister ist vom Himmel gefallen" the Germans say—no master has fallen from the skies. But on the whole, I believe it is out of one mould, because it was written from the very stuff of life.

The three inserts which I have written into the copy Your Honor has been reading are inscribed in all copies which I have given to or autographed for friends. These inserts are to me important, because they, especially the latter two,

round out the book from the viewpoint of composition, and because they reveal the transformation of the late Ludecke into the new. I mean the insert, "God, you saved my body now save my soul" put at the end of the chapter "In A Mental Strait-Jacket" which originally appeared in my manuscript at the end of the chapter "I Escape" and was later taken out to be transferred and forgotten; and the insert at the end of the book, intended to be the last thought: "The Great in the Little! Man—'Learn to know thyself.' Finding your inmost self is finding God."

This brings me to the abstract problem of the inner change *per se*, the inner growth and transformation.

Needless to say, all great religions, including Christianity, stripped of dogmatic formalism are alike in the essential concepts of God and Man's relation to Divinity. They all affirm the possibility and the necessity for each to find his way to God through inner change, through inner growth from earthly desires to spiritual desires. In fact, the quest for truth, the inner transformation from lower levels to higher planes is the very foundation, the premise of the religious concept of salvation.

Even the murderer, if humbly repenting, finds his way to God. "Wer immer strebend sich bemüht, den können wir erlösen"—whoever striving makes an effort, he can be redeemed, says Goethe.

If changes are possible in matters of religion which are concepts of the spirit applied to abstract realities, then changes also must be possible in matters of psychology, which are concepts of the mind applied to concrete realities.

Without exception, anyone who experiences a change, a transformation, a growth of the inner self, reaches a higher level of awareness. In my particular case a definite growth and change have actually occurred as a logical and cogent consequence of my experiences.

I have advanced to a point where I have ceased to think in terms of nationality alone, but in terms of humanity at large. Therefore today I identify myself too completely with mankind in all its forms to feel hatred towards any, however repulsive. And I am at least trying to follow the injunction of a Great One, "to oppose, and if needs be, to fight, lovingly."

This somewhat philosophical excursion may be supplemented by a short reference to the problem of the immigrant in general from the viewpoint of psychology. Every immigrant, male or female, old enough to have acquired a definite outlook on life, has to undergo a change, in many cases even a radical change, in order to become really one of you and to acclimate himself to the, for him, new American world.

It is well known that many of the older immigrants one day discover to their great sorrow that in spite of years of struggle they have been unable to readjust themselves, let alone re-root and reintegrate themselves. Feeling miserable to the end of their days, they are condemned to dangle between two worlds, though they may have been successful in establishing a tolerable or even pleasant material existence.

However, in my case, in contrast to most older immigrants applying for citizenship, I have had ample opportunity to come very close to the American people and to make up my mind whether I want to be one of you or not. In a sense, though still a Nazi in 1932, I had already been Americanized to such an extent that the Nazis nicknamed me the "Amerikaner." And in the end to no little degree my American ways brought me into trouble over there in Nazi land.

When I applied the second time for my first papers, in October 1934, I had visited this country seven times, had spent here in all seven years and ten months and knew

America from coast to coast, better than many Americans born in this country. Now, I have been in America thirteen years, and I have been married to an American woman for twelve years and six months, one whom I consider to be a fine example of American womanhood at its best, and to whom I owe to a great extent the respect and love I feel for the American people.

A native American grows into his citizenship almost unnoticed by himself, taking the consequences for granted as they come along. In my case, it has been a long painstaking process of study, analysis, suffering, and a variety of experiences which developed in me a high state of consciousness before I even decided which course I must take.

It is only natural under the circumstances that the authorities should handle my case with caution and have taken their time to probe pretty deeply into my loyalties and sympathies. In recognition of this I have done my utmost to cooperate by bringing forth what I think are the most essential points in question as may be seen from the correspondence on file. I have leaned backwards to explain myself. There is nothing that I have tried to conceal, camouflage, or confuse. On the contrary, I have been of the utmost frankness, and the suspicion expressed in this Court that I might try to put something over is without any foundation of fact.

At this point, may I be permitted to say a few words in connection with the two witnesses produced by Mr. Robert C. Wilson of the Naturalization Service, I mean Mr. Morley Osborn of Howell, and the Rev. Robert S. Steen, pastor of the First Presbyterian Church of Royal Oak.

Mr. Osborn under oath testified that he had become interested in me after hearing me speak in Howell, that from the first he thought I was a Nazi and even suspected at one time I was a Nazi spy; that he had arranged for the dinner

speech at a dinner meeting in the Eddystone Hotel in December of last year (1938); that he had a dictograph and took down my alleged speech; that as in my speech in Howell, I not only allegedly denounced Jews and Catholics, but defended Hitler.

Rev. Steen was far less positive and merely said that he thought that my alleged remarks on the anti-Jewish movement in Germany showed such warmth that I might really believe in it, but that he must admit that I did not present these views as mine but as an explanation of the Nazi point of view.

Unprepared for such an unfair and absolutely unjustified report I could not on the spot give it the answer it deserved.

Before dealing with Mr. Osborn, I want to stress the fact that I did not solicit the address at the Men's dinner in Howell. The Minister, Rev. Homer N. Noble, invited me to speak, as these letters prove. (Show letters)

To return to Mr. Osborn. First, it is untrue that I made a speech at that dinner. I had several telephone calls and, I believe, one visit from Mr. Osborn. I frankly admit that I had no desire to attend that dinner, but Mr. Osborn was so insistent that I said I would try to come if it were informal, that I certainly would not make a speech, and that I reserved the privilege of leaving soon after dinner, which I did. Possibly my annoyance at having to go at all colored my remarks during the dinner.

In one of our telephone calls Mr. Osborn proposed and later repeated in person to me that he would bring me in contact with Mr. Ford Hicks, the manager of the National Lecture Bureau in Chicago, to book me for a lecture tour if possible, and that he, Osborn, would like to act as my agent in Michigan, because as the representative of a New York publishing house he traveled around, had many connections and surely could place some worthwhile speaking

engagements for me,—with of course the usual commission for him, saying, and I remember his exact words, that "a little side money is always welcome." The realization of Mr. Osborn's pecuniary interest added to my annoyance at having been bothered with the dinner.

I am not a mind reader. Maybe the Gentleman from Livingstone county went sour because the "little side money" slipped out of his hands; maybe the self-appointed Sherlock Holmes and Secret Service men wanted to save the country from danger. However, the gentlemen, *under oath*, said a few things which are *definitely untrue*.

First, when at the advice of my wife who is present to testify, I finally accepted Mr. Osborn's invitation, it is a fact that I did *not* make a speech. All I did was to answer questions. I may have elaborated on this or that, but at no point made propaganda in any way against Jews or Catholics. In answer to specific questions, I simply explained these things as the Nazis see it. *Nowadays many people without thought of the damage they inflict or without logic in asserting their position lightly brand anyone as a Communist, a Fascist, or a Nazi if he attempts to discuss these issues in an objective, rational manner.*

May I be permitted to observe that in neutral, free America, a year ago, nine months *before* the war broke out in Europe, the gentleman Mr. Osborn, lured me, a bona fide guest, into what he thought a trap and appeared at this hearing with a man of God to bring false testimony against me, an alien. I also point to the fact that when I *confronted* this gentleman, Mr. Osborn *on December 5th*, asking why he had proposed to bring me, whom he considered dangerous in touch with Mr. Hicks from Chicago, etc., etc., and whether he was not here because I turned him down and he could not make any money out of me, the gentleman exclaimed that he saw to it that Mr. Hicks would not book

any lectures for me, and that in fact Mr. Hicks had not done so. So said Mr. Osborn *under oath*. However, here are the letters from Mr. Hicks proving that he did do business with me. (Show letters.) I quote . . .

So much for the veracity of Mr. Osborn. If Your Honor thinks it necessary to hear the testimony of my wife in connection with Mr. Osborn's propositions, she is here and ready to testify after I am through with my brief. [See pp. 85-6 of Appendix to Petition for Certiorari and the following Exhibit III, the affidavits of the said Rev. Steen and another guest at the said Osborn dinner, pp. 87-90 of said Appendix.]

However, if Your Honor is not convinced of my sincerity on this point I shall be only too glad to offer more proofs.

If any more evidence is needed as to my trustworthiness, I should like to produce a letter addresssed to Your Honor. The letter is written by Claude Bragdon, one of America's foremost artists and a giant of thought, whom I have the honor to call my friend. Here is his autobiography, "More Lives Than One."

His letter to Your Honor reads as follows. (Quote and hand over letter) [Unfortunately, the copy of this letter of the late Claude Bragdon seems to be lost.]

This *Toronto Star* article, an interview I had last year with their staff reporter, Fred Griffin, who has known me since 1925, is further evidence of the change in me. (Quote)

My book, "I Knew Hitler" has been formally introduced as evidence into this case. (By the way, "I Knew Hitler" is banned in Germany.)

To me it seems to be established beyond question that in connection with this book, the new Ludecke should not be judged on the qualities or defects of the late Ludecke as reconstructed in the book, but solely on the literary and historical qualities or defects of the volume. If the Ameri-

cans wish to accept or reject good or bad writers as the classic Athenians accepted or rejected good or bad speakers, I calmly await the verdict.

May I quote some passages from a few reviews of my book as evidence of its value: Here is the review of the *New York Herald Tribune*, November 14, 1937:

"... His revelations regarding the rulers of the Third Reich are, by a wide margin, the most remarkable which have thus far appeared in print. This work is at once a breathless story of adventure and a political document of prime importance.

"Those who know little of national socialism, and care less, will find these pages utterly absorbing for their psychological content and exciting drama. Those seeking new insight into German Fascism will find them here in abundance. His pages move from climax to climax with the sweep of fiction but, instead of fiction, he offers a fully documented and elaborately indexed history ..." (Prof. Frederick L. Schuman of Williams College, author of "The Nazi Dictatorship," etc.)

From the *New York Times*, November 28, 1937: "... This is an historic document written by Hitler's former director of propaganda in the United States. It is an inside view of Nazism given by a man of great analytical ability and writing talent. It rings true and is convincingly documented. ... In future appraisals of the German leader, Kurt G. W. Ludecke's account will be indispensable. ..." (Emil Lengyel, former chief of the New York Times bureau in Central Europe.)

From *Time Magazine*. "... He writes in English easily ... frequent wit. His story is the most authentic and grimly absorbing Nazi confession that has yet appeared in English. ..."

From *Current History Magazine*. "This is a sensational book, not for the sake of sensationalism, but for what it has to say. ..."

From *The Nation*. "Here is a fascinating human document, the first important autobiography of an active Nazi. There are candid camera shots of Hitler the politician, the dreamer, the liar, the comedian, which are priceless.

"We get a deep insight into the fantastic part the German nation is pressed to play in Europe's great struggle—obscured by a thousand daily events—to achieve a modern organization.

"Whoever tries to understand the European Civil War should read Ludecke's book . . ."

From *The Detroit News*, December 19, 1937: ". . . I confess to having begun these 790 pages with the idea that Mr. Ludecke wrote them chiefly, if not solely, to strike back at his enemies. I finished them with considerable admiration for a man who, having gone through what Ludecke experienced, is able to write so objectively. . . ."

". . . If Mr. Ludecke has been vindictive, he has been skillfully so; and I, for one, incline to credit him with a sincerity which, under the circumstances, is remarkable.

"At all events, Mr. Ludecke has produced an intensely interesting book. Read it as history, or read it as romance, as you choose; it remains vivid, picturesque, and I believe, as a study of the characters of the men concerned, an effort toward objective truth." (By W. K. Kelsey, the well known commentator.)

And here are some letters selected from many I have received from all parts of this country and abroad. (Quote.)

Not money, but letters like these are the real reward of an author. And it gives me satisfaction to know that there are some, apparently, who do not agree with the Court that I am "as dumb as an oyster in the shell."

In conclusion, may I recall a statement which Your Honor repeatedly and emphatically hurled at me, that I would fail to put anything over in this Court.

With equal emphasis I repeat that nothing is further from my intent. If I am guilty of anything in conducting my case, it is of the utmost frankness which I have shown from the very beginning.

I am an open book. I have nothing to hide or to conceal.

If the question of what I am going to do if granted citizenship—or not—arises, I can only say this: I shall continue to earn an honest livelihood as best I can. And now enjoying maturity of mind and independence of spirit, I shall serve Truth as I find it.

However, if freedom of thought and speech is permitted to one and denied to another, if, for instance, a man of German blood must become a coward and a liar to be eligible for citizenship—and that I cannot believe—then I prefer to remain a man without a country, but a welcome burgher of the eternal realm of truth, rather than live the life of a hypocrite and a living corpse.

"Tout comprendre est tout pardonner!" To understand all is to forgive all. In this spirit of goodwill, I shall be only too glad to shake hands with any honest gentile or Jew, black or yellow man, and help to get us a little closer to the goal of Universal Brotherhood.

Therefore, please Your Honor, do not see in the man now standing before you Hitler, or Nazi Germany, or the German-American Bund.

Here stands Kurt Ludecke, nothing and no one else.

Do not deny him the physical foundation for his spiritual aspirations.

One of the finest traits of the American people is their sense of fair play. I have faith that American justice will be given me.

That is all. I thank you.

The Brief speaks for itself. However, Relator's petition was denied that very same day in Court on December 18, 1939, "with prejudice" because of his "failure to prove

attachment to the principles of the Constitution of the United States."

Petitioner took a lawyer who filed a Notice of Appeal. Learning that an appeal without minutes of the hearings would be futile Petitioner wrote to Judge Tuttle on January 22, 1940, asking for an Opinion which was filed on February 26, 1940, (RB. 12-15). It may be emphasized that the said Opinion was not delivered or filed on December 18, 1939, the date of Judge Tuttle's denial of the petition, but *seventy days later* after this Petitioner had requested one.

When Petitioner heard from an American friend who had connections in Washington, that certain people there opposed his naturalization, he dropped his appeal because, under the circumstances, without even the minutes of the hearings in view of the then prevailing trends, attitudes and mounting propaganda an appeal would have been indeed sheer waste of energy and money. "You see, the old fogy had you licked from the start, when you stood before him without a Court stenographer making the report. You were at his mercy then, he knew that much right away . . ." was a remark made to Petitioner in the Clerk's office of the District Court (E. M.)—a remark he will never forget.

Looking backward, it is interesting to note that the said Opinion would never had been written, therefore, could not have been used against Petitioner, had he not himself asked for one, or had withdrawn his application at or after the hearing on December 5, 1939.

Anyway, the cat is out of the bag at last. For it seems that it is this ignoble Opinion which has served as the basis of operation against this Petitioner. It is ignoble because it teems with innunendoes, deliberate misinterpretations

and distortions of facts. The following may suffice to justify this accusation.

1) Judge Tuttle ignored in his Opinion the revealing and important letter of Dr. P. Roest (Exhibit II-A. 83-4) addressed to and left with the Judge at the hearing on December 18, 1939; the affidavit of the late Claude Bragdon on behalf of the Petitioner, also left with the Judge together with Dr. R's. letter; and the testimony of Mrs. Ludecke referred to in Relator's certiorari petition (see pp. 60-1 of petition).

2) Judge Tuttle ignored the Brief read to and left with him on December 18, 1939, an unanswerable argument that had disposed already of practically all the points raised in the said Opinion against this Petitioner.

3) Judge Tuttle states in his Opinion that

> "'Several days after Hitler's rise to power in January 1933, the petitioner broadcast an appeal to Germans in the United States from Washington (p. 561) in which he stated 'America too needs a Hitler or a Mussolini.' " (RB. 14)

However, the printed text on pp. 560 and 561 of I Knew Hitler reads as follows:

> [Dr. K. Sell, the German representative of Wolff's telegraph Bureau—the former semi-official German news agency—,]
>
> "On February second . . . turned over to me five minutes of his *monthly broadcasting program to Germany,* allowing me to tell *Germany* the reaction in America to Hitler's success." [His appointment as Chancellor by Hindenburg.]
>
> "With great excitement, I took the air for the first time in my life, a day or two after Chancellor Hitler's

broadcast in Germany, relayed to this country by short wave. I told my countrymen:

> "America, too, needs a Hitler or a Mussolini! Yes, if I were a German, I, too, would be a Hitlerite!" *So say many Americans today.*" [Italics Petitioner's.]

In the first place, Petitioner did *not* "broadcast an appeal to Germans in the United States" but to Germans in Germany, which is quite a difference. Fortunately, Petitioner made notes during the hearings which he elaborated at home. As a matter of fact it was the above mentioned Robert C. Wilson of the Naturalization Service who at the hearing on December 5 argued that Petitioner stated in his book that "America too needs a Hitler or a Mussolini." Petitioner's immediate objection that Mr. Wilson erred moved the Judge to look up page 561 and see for himself. After examining the passage he admitted that the form of presentation and the quotation marks at the proper place were evidence that Petitioner has quoted Americans and not expressed his own opinion in this exclamation. And Mr. Wilson's point was dismissed. Notwithstanding the honorable Judge found it honest, just and fair to repeat later in his own Opinion a version and interpretation he himself had dismissed as false in open Court.

4) Judge Tuttle states in his Opinion (RB. 15) that

> "Two witnesses of good standing voluntarily appeared and testified as to the character of recent addresses made by petitioner, showing his lack of attachment to the principles of our Constitution and the slavish attachment to Hitler and the present German cause. . . ."

Petitioner has dealt with Mr. Osborn at length already in his Brief (see pp. 25-7 of this Reply-Brief) which he

repeats was read to and left with the Judge at the hearing on December 18, 1939. It may be added here, that Petitioner made it a point when writing the said Brief to treat this significant performance with restraint and not to emphasize the failure of the attempted smear. The truth is that Petitioner interrupted the witness Osborn and accused him in public of perjury, with the effect that Judge Tuttle did not persist but broke the testimony off and passed on to other things.

Yet His Honor found it honest, just and fair to climax his Opinion with "Two witnesses of good standing . . ." —one of whom committed perjury and was a flop, while the other, Rev. Robert S. Steen, B. D., testified nothing of the kind as his affidavit shows which gives Judge Tuttle the lie and appears as Exhibit III in the Appendix of Relator's Petition (A. 89-90). Also the affidavit of Mr. Christian T. Andersen supports Petitioner's statement. (Also Exhibit III—A. 86-88.)

Moreover, neither of the "Two witnesses"—not even Mr. Osborn—said a word of Petitioner's "slavish attachment to Hitler and the present German cause." That part is pure fabrication of the Judge. Petitioner never in his entire life has felt a "slavish" attachment to any person or to any thing. It simply is not in his nature. Finally, it must be noted, that Judge Tuttle did not state that he believed that this Petitioner was engaged in subversive or un-American activities or in any wise connected with any groups engaged in such. His verdict filed on December 18, 1939, with the Eastern District of Michigan, Southern Division, Petn. No. 119289, states only that the "reason for denial" was Petitioner's "Failure to prove attachment to the principles of the Constitution of the United States. With prejudice. Not to refile before five years from date."

That Judge Tuttle seventy days later thought it compati-

ble with the dignity of the Bench, the responsibility of his office, with the oath he took when appointed a Federal Judge to write that ignoble opinion, that is his business but should not be held against this bona fide Petitioner. Moreover, even that unfair verdict would have allowed Petitioner to refile a petition for naturalization on December 19, 1944, and as a matter of fact and of record he tried to do so, but . . .

In view of these undeniable facts, Petitioner prays that the Honorable Supreme Court ignore the said Opinion of the late Judge Tuttle introduced by Respondent in his Brief under Appendix B (RB. 12-15) or in the alternative order an investigation to establish beyond any doubt the true facts regarding that Opinion. Petitioner has more evidence in his possession and there are witnesses ready to testify in his behalf. Moreover, there are good reasons to hold that the said Opinion indeed served as the basis and an instrument to persecute and torture this Petitioner. Or is it not persecution and mental torture to which Petitioner has been subjected ever since the denial of his petition for naturalization in 1939, when he was not even permitted to leave this country for Mexico early in 1941, ten months before Pearl Harbor, where he wished to live more economically and in peace of mind to finish work on a book; when he is kept a prisoner for *six years* without reason and cause and ordered deported as a "dangerous" animal to perpetual misery in Germany?

Like any free-born citizen of the world, this Petitioner abhors to be at the mercy or in the power of any man. Sure enough, it's an old story that people with too much leather about their consciences, who spit in the very face of their own God, are indignant and find it shocking when put in their place. Of course, it may well be that Respondent knew not about the Brief Petitioner read to and left with Judge

Tuttle, though he enclosed a copy of it in his letter of January 16, 1946, to the Attorney General.

Not for one moment, does this Petitioner contest the right and the power of the Government to remove an alien, if there is specific, real and substantial evidence to justify the charge that he is "dangerous." But the assertion that an Attorney General, his delegate or some obscure board can act as jailer, prosecutor, judge and jury, all in one, and thus destroy the character and livelihood, the health and the very life of an honest man of goodwill, without due process of law, be he a citizen or an alien, especially in this country which enjoys the tradition and the philosophy, the ideals and the principles of a true democracy of Equality, proclaimed in the Declaration of Independence, is too preposterous to deserve further comment. It is said that quibbles are to be met with quibbles; but there are times when the queer, crooked, yet formal paths of casuistic and legalistic procedure bordered with invalid precedents must be rebuilt into straight paths of right and common sense bordered with the eternal precedents of Truth.

Finally, it may be appropriate to direct attention to the fact that it is the Government, which is sponsoring through the "Freedom Train" a program designed to the rededication of all citizens to the basic American principles (dealt with at length in Petitioner's arguments and briefs). Should not therefore all public servants in every branch of the Government set a shining example in applying these basic American principles in practical terms, especially in these days when the most fundamental human rights are violated with utter ruthlessness in a calculated, systematic degradation of man and cynical contempt of the integrity of the individual human being not only by blind and despotic leaders, but also by arrogant and irresponsible bureaucrats corrupted and drunk with power?

The Editorial "Created Equal" of the New York Times of October 31, rightly says:

> "The central point in the report of the President's Committee on Civil Rights is the reaffirmation of an old principle—one too often misunderstood, ignored and even jeered at in these days. This is, as Thomas Jefferson wrote in the Declaration of Independence, that 'all men are created equal.' The words never meant that all men were equal in intelligence, physical strength or character. They meant that all men were equal before the law. They have come to mean more: that men are equal, in the language of this report, in 'an essential dignity and integrity.'"

The study of the said Report published in the New York Times of October 30, 1947, offers indeed much food for thought. Of particular interest, in connection with the instant case and altogether with the shameful treatment of the German civilian internees still held at Ellis Island as "dangerous alien enemies subject to removal" without due process of law, is the following passage of the Report:

> ". . . We need no further justification for a broad and immediate program than the need to reaffirm our faith in the traditional American morality. The pervasive gap between our aims and what we actually do is creating a kind of moral dry rot which eats away at the emotional and rational bases of democratic beliefs. There are times when the difference between what we preach about civil rights and what we practice is shockingly illustrated by individual outrages. There are times when the whole structure of our ideology is made ridiculous by individual instances. And there are certain continuing, quiet omnipresent practices which do irreparable damage to our beliefs."
>
> ". . . The damage to those who are responsible for these violations of our moral standards may well be greater. They, too, have been reared to honor the com-

mand of 'free and equal.' And all of us must share in the shame at the growth of hypocrisies . . . All of us must endure the cynicism about democratic values which our failures breed."

"The United States can no longer countenance these burdens on its common conscience, these inroads on its moral fiber."

After receipt of the Report of his Civil Rights Committee the President of the United States said inter alia in his published Statement these memorable words:

". . . I notice that the title of this Report is taken from the Declaration of Independence. I hope this committee has given us as broad a document as that—an American charter of human freedom in our time.

"The need for such a charter was never greater than at this moment. Men of good-will everywhere are striving under great difficulties to create a world-wide moral order, firmly established in the life of nations.

"For us, here in America, a new charter of human freedom will be a guide for action; and in the eyes of the world, it will be a declaration of our renewed faith in the American goal—the integrity of the individual human being, sustained by the moral concensus of the whole nation protected by a government based on equal freedom under just laws."

The attitude and procedure of the Department of Justice in the instant case certainly are contrary to American tradition and morality, to American principles and justice, as they are contrary to the will, the faith and the spirit expressed in the above quoted Statement of the First Public Servant of this great land.

If the President of the United States really means what he says, and this Petitioner believes and hopes that he does, is it not then the duty of every public servant in this country, high and low, to do his very best to live up to the Spirit and

to the Law of the American Purpose acknowledged and reaffirmed by his Chief, the President of the United States?

Finally, if more proof is needed to show that in the instant case the Department of Justice indeed is not only defending an untenable position but is actually contradicting itself and defeating its own intent and purpose, here is another striking document, the WORLD RIGHTS BILL proposed by the United States. The report of the New York Times of December 1—47, page ten, reads in part as follows:

> "A World Bill Of Rights . . . was proposed on behalf of the United States today by Mrs. Franklin D. Roosevelt . . . United States representative to the United Nations Commission on Human Rights. . . .
>
> "The document is the work of officials from the State, *JUSTICE*, Labor and Interior Departments. The State Department said in announcing the text that 'even though all these rights are not immediately obtainable by everyone everywhere in the world, they are included on the theory that they are *fundamental and should be the rights of every individual.*' [Italics are Petitioner's.]
>
> "Following is the text of the United States proposal:
>
> PROPOSAL FOR A DECLARATION OF HUMAN RIGHTS
>
> Whereas, by the Charter of the United Nations all members affirm their faith in the dignity and worth of the human person and pledge themselves to cooperate in promoting respect for human rights and fundamental freedoms for all.
>
> Now, therefore the General Assembly of the United Nations resolves to set forth in a solemn declaration these essential rights and fundamental freedoms of man, and calls upon the peoples of the world to promote the rights and freedoms hereby proclaimed.

ARTICLE I. Everyone is entitled to life, liberty, and equal protection under law.

ARTICLE II. Everyone has the right to freedom of information, speech, and expression; to freedom of religion, conscience, and belief; to freedom of assembly and of association; and to freedom to petition his government and the United Nations.

ARTICLE III. No one shall be subjected to unreasonable interference with his privacy, family, home, correspondence or reputation. No one shall be arbitrarily deprived of his property.

ARTICLE IV. There shall be liberty to move freely from place to place within the state, to emigrate, and to seek asylum from persecution.

ARTICLE V. No one shall be held in slavery or involuntary servitude. No one shall be subjected to torture, or to cruel or inhuman punishment or indignity.

ARTICLE VI. *No one shall be subjected to arbitrary arrest or detention. Anyone who is arrested has the right to be promptly informed of the charges against him, and to trial within a reasonable time or to be released.* [Italics are Petitioner's.]

ARTICLE VII. Everyone, in the determination of his rights and obligations, is entitled to a fair hearing before an *independent* and *impartial* tribunal and to the aid of counsel. No one shall be convicted or punished for crime except after public trial pursuant to law in effect at the time of the commission of the act charged. *Everyone, regardles of office or status,* is subject to the rule of law. [Italics are Petitioner's.]

ARTICLE X. *Everyone, everywhere in the world, is entitled to the human rights and fundamental freedoms* set forth in this declaration without distinction as to race, sex, language, or religion. The full exercise of these rights requires recognition of the rights of

others and protection by law of the freedom, general welfare and security of all.

No sane and honest person in the world will deny, that in the light of the proposed World Bill Of Rights the Alien Enemy Act of 1798 is inadequate and obsolete, and that the dishonest interpretation and inhuman application of this Act in the instant case is not only a flagrant violation of acknowledged Natural and Moral Law as well as established National Law, but also definitely and absolutely contrary to the spirit of and to the letter of the International Law manifest in the World Bill Of Rights, which the Government of the United States of which this very same Department of Justice is a vital part is offering for adoption by the United Nations of the world.

Summing up this point, Petitioner respectfully submits that Respondent has shown no valid reason whatever why the Judgment of the Court below should NOT be reversed, therefore prays that the Court disregard Respondent's Brief.

11. The principal question presented in the instant case includes another question, which considering the terrible experiences punishing us in our time is of particular importance, namely, the question: Is there a legal wrong?

Already Cicero has answered this fundamental question. In his paper "De legibus" he asks inter alia, what to think of a law decreed by a dictator empowering him to execute every one of his subjects at will without judicial procedure ("ut dictator quem vellet civium indicta causa impune posset occidere").

The Roman jurist reached the conclusion, that such an extremely inhuman law ("lex inhumanissima") is unjust and has no legal validity. We know today for certain, and this insight has found an immortal expression in the Declaration of Independence, what man divined from time im-

memorial, that there are eternal laws removed from human arbitrariness, supreme principles of Right and immutable standards, which are not only of an ethical nature but first norms of the most elementary kind, superior to all so-called positive law sanctioned by State Statute and superseding it whenever contrary to these. The Declaration of Independence put on paper what follows of itself as a logical consequence from natural and moral laws written into the heart of man, and what centuries of culture and civilization recognized as a commandment of self-respect and reason.

Already 1625 long before Goethe and Schiller, Blackstone and Kent, the Dutch thinker Hugo Grotius in his famous "De jure belli et pacis" speaks of the "observatio juris naturalis ac divini ad quam reges omnes tenentur," And John Locke ("Two Treatises On Government 1689"), who influenced Tom Paine who influenced Jefferson, knew likewise the boundaries of executive power and taught the inalienability of basic human rights and the right of resistance against executive power, which arbitrarily disregards these rights.

That such a Divine Order of Right is a most uncertain thing, is an objection which is not valid. It is undeniably inner experience, that we have in our heart an infallible gauge telling us, which human statutes are incompatible with the Divine Law: our clear consciousness of Right. In our conscience we hear the voice of God, which unfailingly and incorruptibly calls, where the Right ends and where the Wrong begins. We must learn again to h-arken to this pure unerring voice and sharpen our ears for the will of God. The commandments and rules of human life and community are sunk in our hearts by the creator of all things, born with us, as it were, "jura divina quadam providentia constituta," as is said already in Justinian's Institutions. We

do not make them, we can but find them. They are indeed a gift from heaven, "in our conscience planted by God," in the words of Ernst Moritz Arndt. The earthly state and its codes and statutes are never an end in itself. They are there to serve us the living, not the dead, the means for the higher purpose, to help us, not to hinder us, in our efforts to reach and to fulfill our destiny as willed by God. It is a double maxim that right is what profits the state. Only that is truly profitable and of lasting value, what is consonant with the Eternal Law of God. Nihil est utile, quod non est honestum, already Cicero said. We must recognize, that also the state can do wrong and that high above him there reigns the Law Absolute, which according to Plato though for ever immutable man may find in his soul as revelation of God. We must learn that none of us will obey, no judge will apply, no official will enforce, a public Statute which is in clear conflict with the supreme principles of the Absolute Law of God. Only when the state in *his* legislation is obedient to the Law of God, has the state the right to demand obedience from his people. And if not, then particularly the judge—should he not wish to resign—must administer justice contra legem, not according to arbitrary opinions of his own, but obedient to his conscience in harmony with God. An independent Judge conscious of his responsibility will not in false loyalty to the letter of the "law" prostitute his self to apply a "right" the result of which would mean disregard of the Eternal Right and lead to the prostitution of Justice.

We learned a lesson from the greatest show in world tribunal history, the public trial of the major Nazi criminals at Nuremberg, where men were hanged to set an example for all the world to see, that Might Does Not Make Right, and that crimes even if "legally" committed in the name of the state by the highest executives of the state are crimes

which must be punished. And Justice Jackson rightly emphasized in his report on the Nuremberg-trial, that more important than the personal fate of the Nazi leaders are the principles, that these principles, now backed by the power of precedent, constitute the basic charter of international law, and that this law applies not only to the Nazi leaders but to all men everywhere; and that it is incumbent upon all victors to review their own politics and practices in the light of the new law.

Considering the facts, the questions and reasons presented, is it then too much, if all that what this Petitioner asks and prays for is to *accord him due process of law*—a right which was granted even the criminals at Nuremberg before they went to their ignoble death—to *determine* the question of whether or no he is dangerous to the public peace of the United States.

Summing up it is for this Honorable The Supreme Court of the United States to decide, whether or no the old legal principle should be invoked that cessante ratione cessat lex ipsa, and whether the instant case is to be judged on the basis of totalitarian justice governed by American godlessness, or on the basis of true American justice governed by recognized Natural Law and established National Law in this dear land, which is supposed to have a Government of Law and not a government of men. (In this connection, special attention is called to the famous Dred Scott case mentioned in Petitioner's, that is, APPELLANT'S BRIEF. (A. 108, 109, 116, 117.).

12. After an honest examination, without prejudice, of the evidence and argument submitted in this Brief and Appendix, the conclusion is inevitable that Petitioner is not only *not* dangerous but a useful and constructive member of society, a law-abiding, honest and legally admitted alien resident of goodwill who has been wronged, that his con-

tinued imprisonment and ordered deportation, particularly considering the appalling conditions in Germany, *without due process of law,* and altogether the entire procedure adopted by the Department of Justice is a mockery of justice, un-American and dishonest, arbitrary and illegal, because it is, first, a violation of the Alien Enemy Act itself which was never meant to serve such inhuman proceedings, and second, a flagrant violation of recognized Natural Law and established National and Constitutional Law.

It is a matter of record and a significant fact (1) that Petitioner, simply because he insisted already in Germany on principles, decency, and law, rotted eight months in Nazi concentration camps until his escape to the United States in 1934; (2) that nevertheless he was interned in this country as a potentially dangerous *pro*-Nazi; and (3) that he was so abused and persecuted as an *anti*-Nazi in various camps by other German internees (practically all of whom have been repatriated or released [!!] in the meantime), that Mr. W. F. Kelly, Asst. Commissioner for Alien Control, I. & N. Service, Philadelphia, Pa., granted his request and transferred him to a "quiet" camp near Algiers, La.

For the record, it may be added now that Petitioner, well aware of the then prevailing attitudes and trends, anticipated complications and difficulties as to his particular case, therefore, from the very beginning of his imprisonment made it a special point to put Statements on record showing his attitude and his convictions, and took good care to prove by his conduct that he was doing his best to live up to his convictions. And it is too a matter of record that Petitioner—whatever his shortcomings and weaknesses—never wavered through all these years nor changed his basic attitude to life and the important things. (See his various Statements etc. included in the Transcript of Record and Certiorari Petition.)

Anyway, there is the unanimous decision of the nationally known Circuit Judges, the Hon. L. Hand, Swan and Augustus N. Hand, stating inter alia that "justice may perhaps be better satisfied, if a reconsideration be given him in the light of the changed conditions . . ."

However, so far, the Department of Justice did not reconsider in spite of this Opinion and in spite of the recommendation of his release, so Petitioner learns, by the Senator Langer-Shoemaker-Rothstein Committee mentioned above.

The fact must be stressed that the Supreme Court in deciding against this Petitioner at the same time publicly and officially adopts and confirms the notorious Opinion of Judge Simon H. Rifkind, dated August 6, 1946, in *United States ex rel. Schlueter* v. *Watkins*, used by Respondent as the principal precedent against Petitioner, which stated that alien enemies have no rights whatever and can be imprisoned and deported at will "without a court order and without a hearing of any kind," i. e., without due process of law.

Moreover, in doing so the Supreme Court of the United States is giving official notice for all the world to know, (1) that an honest and law-abiding, legally admitted bona fide alien resident of goodwill, even before he can lawfully be classified as an "alien enemy," is outside the pale of law, therefore without legal protection in the United States and at the mercy of arbitrary and irresponsible officials of the Government, hence exposed to persecution, mental torture, indefinite imprisonment and finally deportation to more misery and maybe death, even without the possibility of appeal and redress; (2) that the immigration and naturalization policy of the Department of Justice has undergone a radical change in perfect agreement with the actual Supreme Court and that the high-souled and high-sound-

ing statements in *Our Constitution and Government—Federal Textbook on Citizenship*, published by the Department of Justice in 1941 (!!) for naturalization applicants (see pp. 144-45 of Appendix to certiorari petition), are not worth the paper they are printed on; (3) that in case of another global conflict, this time between the United States and Soviet Russia and a more or less bolshevized Europe and Asia, any legally admitted alien resident of the millions of such aliens here and in Latin America, turned overnight into alien enemies, may suffer the fate of this Petitioner, for instance, however unjustly, as explained on pp. 99-101 of his certiorari petition; (4) that in the opinion of this Honorable Court the American Declaration of Independence is not valid, therefore not binding and does not mean a thing in practical terms, even though it is the Birth Certificate of this nation which Lincoln said is "an abstract truth, applicable to all men and all times;" even though it is—in one way or another—however inadequately incorporated as a Bill of Rights in 47 of 48 Constitutions of the United States and in the Federal Constitution as well; even though it is the First Law of the land for reasons explained in detail in Petitioner's certiorari petition and Appellant's Brief (see pp. 94-117); in other words, that in the eyes of the present Supreme Court of the United States the basic principle, the very core of American democracy, and ideal of the American Purpose, do not count, and that the many official statements, declarations, and lofty promises made by American Presidents, Judges, Statesmen, and Public Servants in the highest places, as quoted in the various papers of Relator's certiorari petition, are mere words and sham; or finally (5) that perhaps this Court holds that a German alien enemy is *not* a human being, to whom the Declaration of Independence would apply, but a lower animal, therefore has no unalienable rights, hence

as a last resort must appeal to the goodwill of the American Society For The Prevention Of Cruelty To Animals.

However, Petitioner cannot bring himself to believe that this Honorable Court will betray the high trust committed to his charge. There is too much at stake: American principles, American justice, American honor, and last but not least, the judicial honesty of this Court, the Supreme Court of the United States, which one day will be judged by History and stand before the Bar of God.

Because of the vital issues involved, Petitioner from the very beginning of his ordeal has been careful, on the one hand, to base his argument on wholesome precedents and the sound reasoning of honest and mature Americans, and on the other, to support his own interpretations and conclusions with public statements of American public servants. Here is a telling statement of Robert E. Cushman, according to the New York *Times* one of the country's leading authorities on civil rights, director of researches in civil liberties at Cornell University, author of several books, and member of the President's Committee on Civil Rights, who in an article *Our Civil Rights Become a World Issue* in the N. Y. T. Magazine of January 11, 1948, inter alia has this to say:

> Now that the war is over, this nation finds itself the most powerful spokesman for the democratic way of life, as opposed to the principles of a totalitarian state. It is unpleasant to have the Russians publicize our continued lynchings, our Jim Crow statutes and customs, our anti-Semitic discriminations, and our witch-hunts; but is it undeserved? Some of the flung mud sticks. We cannot deny the truth of the charges; we are becoming aware that we do not practice the civil liberty we preach; and this realization is a wholesome thing.

If Mr. Cushman and the American people at large would know of the un-American, outrageous, and arbitrary treat-

ment decent civilian internees have to suffer at the hand of the "conspiratorial clique" at Washington whose influence is still at work according to alarmed Senators and observers, they certainly would include this pitiful fact among the above mentioned charges.

Dr. Douglas M. Kelley, a former Army psychiatrist who was responsible for the mental health of the major war criminals, Goering et al., at the Nuremberg prison, in an official report says the following:

> Most Americans feel that, although the Germans may have followed such leaders, members of other civilized communities certainly would not be taken in by such 'pathological personalities.'
>
> As a result of this sentiment, no one seems to take seriously the possibility that a similar group could be organized again. The lesson to be learned from the Nuremberg tests is that such personalities as the Nazi leaders who are totally ruthless can be duplicated in any country. Given the opportunity, a group of men of similar personalities could be found who would not hesitate to climb over the bodies of half the people in America to gain control of the other half.
>
> (New York *Times* of April 26, 1947.)

A timely warning indeed! For the forces at work in all countries are fundamentally the same, and so are the potentialities of human nature. Americans will escape these evils only if they recognize that the danger to which Germany was one of the first to succumb is a *common* danger.

The Honorable Tom C. Clark, Attorney General of the United States, in an address to the New York Bar Association, asserted that on the question of investigations under the President's loyalty order individuals under inquiry were assured of:

> A fair, open hearing with counsel, witnesses, the right of cross-examination and two possible appeals.

> . . . We don't intend to take any action until we can prove it . . . there will be no charges of disloyalty until we have the evidence.
>
> (New York *Times*, January 24, 1948.)

That much now is conceded to Federal employees who after all face only discharge from office and that only if proven *disloyal* to their Government; whereas their fellow-men, decent and *loyal* civilian internees, at the mercy of some obscure influences and brutually branded as "dangerous alien enemies"—without any proof, without any specific charges,—for no good reason whatever can be imprisoned, persecuted, deported to more misery and maybe death in prostrate Germany, without even the possibility of appeal, because it is alleged that they have no rights, therefore are condemned "without a hearing of any kind."

But let us be reminded of the words of John Adams, the second President of the United States, who said:

> You have rights antecedent to all earthly government; rights that cannot be repealed or restrained by human laws; rights derived from the Great Legislator of the Universe.

The unalienable right are inherent, and to guarantee and secure them to us governments were instituted among men. If the United States is to stand before the world as an exemplar of equality of rights, if it is to urge with integrity the acceptance by the rest of the world of the tenets and practices of a democratic society, then it would be well and high time if they set their own record straight.

In conclusion, Petitioner solemnly declares that it is his fervent wish to create a wholesome precedent for the sake of Truth and Liberty and Justice for all men, and last but not least for the sake of the Honor of the American people he loves who must not fail this time to become the moral

leader of the world, for man's present problems are essentially moral ones. And the world's most important problem—justice for men and the establishment of the Brotherhood of Man and the Fatherhood of God in ONE WORLD—has been an important problem for some time. Subject to the law of evolution as all things human are, also human law and human justice are the gradual expressions of the moral judgments of the civilized world. Therefore, human law and human justice—not looking backward but looking forward—should advance with the times and create new and ever higher precedents. Truth alone will make us free. So with Lincoln "Let us have faith that right makes might; and in that faith let us to the end, dare to do our duty as we understand it!"

If soldiers have to die on foreign battlefields for principles and ideals at the command of those who, safe and smug at home, are ready to betray these very same ideals as soon as real or imagined emergencies are past, then the least an honest man can do, be he a prisoner or free, is to stand up and speak the truth as best he can while he can. Therefore, Petitioner, realizing how much there is at stake, passionately flings the truth in the teeth of an obstinate reality that will not conform to it; and inadequately and feebly he knows, yet with all his soul desiring to move this August Court, appeals to the judicial honesty and conscience of the nine Justices representing the Soul and the Conscience of America to really administer justice in this all important case; and, for the record, he uses this last opportunity to appeal also to the conscience of the counsel of Respondent, the Honorable Philip B. Perlman, Solicitor General of the United States, and his associates, to desist and abandon an untenable position that is unworthy of the American Purpose, Ideals, and Traditions, for denial of the

instant cause at the same time is the denial and annulment of the Declaration of Independence, the First Law of the Land.

Conclusion

It is respectfully submitted that, for the reasons set forth above, the judgment of the Court below should be reversed and the cause remanded to the District Court with direction for such further relief as this Court may deem just and proper, or, in the alternative, the judgments should be reversed and Petitioner admitted to parole pending final disposition of his case in a full judicial hearing with due process of law to establish the truth.

KURT G. W. LUDECKE,
Petitioner,
Attorney in Person.

Washington, D. C.
April, 1948.

Supplement

The Court entered on April 19, 1948, the following order in the case LUDECKE v. WATKINS, etc., No. 723, October Term, 1947:

> Leave is granted petitioner to file in typewritten form, as an appendix to his brief, the material appended to his petition for a writ of certiorari.
>
> The petitioner is requested to respond to the letter of the Solicitor General dated April 9, 1948, relating to a change of circumstances, and both parties are directed to brief and argue the question whether the cause is moot.

In view of the fact that Petitioner—because of cogent reasons already submitted in his letter of April 16 to Mr. H. B. Willey, Deputy Clerk, for presentation to the Court,

further because of the new complications and time devouring study of the "moot" point raised by the Solicitor General, finally because of the mass of work of different kind weighing down the worn-out Petitioner already harassed by the pressure of time,—is so wrought up emotionally, and so exhausted physically and mentally, that he is near the breaking point, therefore, par force majeure could not devote sufficient time nor care to said "moot" point of which the Clerk was advised on April 9, but this Petitioner learned only through the letter from the Clerk dated April 19.

Had Petitioner received a copy of the said letter of the Solicitor General dated April 9 at a proper time, he would have considered his returning to Ellis Island, but learning of it at such a late date when practically two thirds of his temporary parole had past, he decided against it because of the definite arrangements he already had made here in Washington in connection with his certiorari work and Oral Argument set for April 30.

Therefore, since the Respondent failed to inform him in due time, Your Petitioner respectfully submits that the Court disregard the said letter of the Solicitor General as well as the question whether "the cause is moot."

Further Petitioner holds that the instant cause has NOT become moot by virtue of his merely temporary release on parole from custody which is very problematic indeed already for the simple fact that his reimprisonment so very near is hanging like the proverbial Damocles sword over his head; and that the case of *Baker* v. *Hunter*, No. 151, October Term, 1944, dismissed as moot, 323 U. S. 740, (referred to in said letter of the Solicitor General), under no circumstances, should be admitted to serve as precedent for this case.

After examining the printed matter filed in said case,

Petitioner came to the inescapable conclusion that the *Baker* v. *Hunter* case is absolutely and completely different from the instant case, as to background and issues involved, as well as factually, legally, morally, psychologically, and otherwise, therefore cannot possibly serve as a valid precedent. Moreover, the Solicitor General himself states that there is "good ground for the contention that the matter is not moot" and refers to the *Altiere* case relying on the cases of *Jaegeler* v. *Carusi*, and *Lindenau* v. *Watkins*, which so far Petitioner had not the time to look at for closer examination.

Anyway, it should be inadmissible eo ipso and per se to present such mental acrobatics springing from quibbling and false thinking afraid to face the truth, in order to kill a great case that deals with fundamentals involving higher interests and touching ultimate issues.

Furthermore, the "moot" question raised by the Solicitor General is incompetent, irrelevant, and immaterial, also for other reasons stated below.

After the denial of his Motion For Action On Petition For Rehearing Petitioner most reluctantly had to persuade himself, that there is no American justice, therefore,—convinced that Laughlin would lose the case of *Ahrens et al.* v. *Tom C. Clark*,—decided that, under the pressure of crushing circumstances, even only the relative liberty of action under the restraining regulations of temporary parole of a so-called alien *enemy* (which he is not) was imperative, therefore for him a question of to be or not to be. Hence, Petitioner made a tremendous physical and spiritual effort to break through all the adversities overwhelming him and at last on March 30th—after on March 25 his writ of habeas corpus for voluntary departure was brutally dismissed without even his brief having been examined, and after his application for parole (according to information

received) on March 29 was denied by the Attorney General himself,—succeeded to obtain a parole of thirty days to effect his voluntary departure with the proviso explicitly stated in his applications submitted to Mr. W. F. Kelly, Assistant Commissioner and director of the alien Parole section of the Immigration and Naturalization Servide at Philadelphia, and to Mr. George S. German, Chief, Alien Parole Section at Ellis Island, that he would definitely prefer to stay in America if allowed to do so.

Considering the situation at the time, it must be remembered that should Laughlin lose the *Ahrens* case this Petitioner as well as all the other internees would no longer be protected by law but definitely be at the mercy of the Department of Justice that might treat him and others as it had treated one Bishop, also an "alien enemy," who was deported early in the morning the very day after he had lost his case in Court. Therefore, and because Petitioner simply could not stand it any longer at Ellis Island for reasons submitted in said Motion For Action On Petition For Rehearing (denied on March 8), he had no other choice but to exact parole for voluntary departure, the only avenue left open to him to make a last effort to obtain his release and satisfy himself, as every fiber of his being cried out for action and a change of air. That is why after a few days in New York necessary to reorientate himself (having been out of circulation for six years and five months), he left for Philadelphia and Washington, where in the morning of April 8 Mr. Rothstein, Director of the alien control unit of the Department of Justice, with whom he had a talk the previous day, telephoned Petitioner that the Court had granted his certiorari after all. It was the surprise of his life. Could he have foreseen or even only thought of the slightest possibility of the amazing and absolutely unexpected development, Petitioner certainly

would have waited and would not have applied for parole. But as things stood at the time and because of urgent personal problems confronting him, Petitioner had to act as he did.

Thus, the foregoing being the background of "the question whether the case is moot" your Petitioner asks, can the present situation possibly be compared to the situation of Norman G. Baker whose case referred to by the Solicitor General was dismissed as moot? There is no parallel whatsoever. Here is the fundamental difference.

According to the official Transcript of Record of No. 151, October Term, 1943, Norman Baker, Petitioner, on the basis of *due process of law*, was properly indicted, properly convicted on verdict of guilty of an actually committed crime, and properly sentenced on January 25, 1940, to four years imprisonment in a penitentiary. However, Baker, properly convicted criminal, elected to remain in the Pulaski County Jail pending appeal, instead of beginning sentence in the Federal Prison. Defendant's appeal was determined on March 13, 1941, and after 14 months in said county jail defendant was delivered on March 22, 1941, to U. S. Penitentiary at Leavenworth, Kansas. While imprisoned in the federal institution, he earned 336 days good time, but was released from respondent's actual custody on July 19, 1944. This time, together with the time actually served, and the fourteen months he spent in County Jail, exceeds the maximum four years sentence which was imposed. Ergo, Baker by habeas corpus proceedings sought to obtain his release from the custody of the Warden of the Federal Penitentiary contending that time spent in the county jail, pending appeal and affirmance of his conviction, should be applied and credited to the sentence imposed. Apparently, in the course of this litigation, after having been released on parole and after the Solicitor General had suggested to the

Court that the cause had become moot, because Baker was released from custody on July 19, 1944, and that the petition for a writ of certiorari should therefore be denied, Baker insisted that being entitled to credit upon his sentence for the fourteen months spent in the county jail, when the petition for certiorari was filed, he was entitled to *complete liberty* . . . However, the case was dismissed as moot on the ground that Petitioner had been released from custody upon his completion of the minimum term imposed under the sentence mentioned above.

During Ludecke's proceedings in the District Court, and his appeal to the Circuit Court, he was confined to Ellis Island in custody of the District Director of the Immigration and Naturalization Service pursuant to an order of removal issued by the Attorney General directing petitioner's removal to Germany.

After application had been made to this Court by petitioner Ludecke for a writ of certiorari petitioner was conditionally released on parole. The conditions on which he was released are set forth in the following agreement which petitioner was compelled to sign before he was released:

Parolee's Agreement

March 31, 1948.

I, Kurt George Wilhelm Ludecke, a national of Germany, in consideration of my parole under regulations relating to alien enemies, hereby agree to keep in close touch with Inspector Joseph Judge, Immigration and Naturalization Service, Ellis Island, New York, and to that end I agree to report to him by 'phone on Thursdays during this period between the hours of 9:30 a. m. and 4 p. m. (Whitehall 3-8877, Ext. 85). I also agree to comply with all provisions of the regulations pertaining to alien enemies and with all the terms of my parole.

I understand that I am being granted a 30-day parole for the express purpose of effecting my departure from the United States under the outstanding removal order issued by the Attorney General, in my case. I agree that if I cannot produce a visa or evidence that it can be obtained and depart from the United States on or before May 1, 1948 under the outstanding removal order, as stated in my letter of March 26, 1948, I will surrender to Ellis Island not later than the 3:45 p. m. ferry on Monday, May 3, 1948 for immediate involuntary removal to Germany.

(Sg.) KURT LUDECKE.

P.S. I further agree that the appeal for a rehearing submitted on March 30, 1948, to the Southern District of New York, will be withdrawn and habeas corpus proceedings discontinued.

(Sg.) KURT LUDECKE.

From this agreement it is clear that petitioner has not been unconditionally released, but upon expiration of the parole period is subject to being again interned on Ellis Island, and in addition is subject to immediate *involuntary* removal to Germany, despite the fact that under the law he has the right of voluntary departure which right necessarily includes the right to choose the country to which he desires to go. Further the petitioner is continually subject to the jurisdiction of said Director, who at his discretion may impose additional conditions, or even curtail the parole.

These conditions and limitations on petitioner Ludecke's liberty clearly distinguish the parole in his case from the conditions which prevail in the case of *Baker v. Hunter*, 323 U. S. 740 relied on by respondent. In the Baker case the petitioner was released from prison pursuant to law after he had served a sentence based on a criminal conviction. Baker was free and not subject to re-arrest or re-con-

finement at the end of a certain limited period, as is petitioner Ludecke.

Ludecke's parole is not pursuant to any provision of law. It is limited to thirty days. At its expiration he must return to Ellis Island to be confined. Baker was released because the law required it. Ludecke was paroled at the whim and fancy of respondent, who can take him into custody again at any time, as he actually has done in other cases of alien enemies interned at Ellis Island. The fundamental difference between the cases is that Baker knew that he could insist upon his rights under the provisions of due process of law, while Ludecke has repeatedly been told by respondent that he has no rights, which respondent must respect, because he is an alien enemy.

Petitioner Ludecke while on parole is subject to such conditions and restrictions imposed by respondent as to constitute a restraint on his liberty. Such restraint is sufficient to support issuance of a writ of habeas corpus. Actual confinement in jail, or detention on Ellis Island, is not necessary. To restrain means to check, confine, curb, forbid, hinder, impede, limit, prevent and to obstruct.

Couge v. *Hart*, 250 Fed. 802, 803;
Chicago Packing Co. v. *Chicago*, 88 Ill. 221, 226;
Ogden v. *Wisconsin*, 111 Wisc. 413, 419, 87 N. Y. 568;
Smith v. *Madison*, 7 Ind. 86, 89.

Any restraint which precluded freedom of action is sufficient. The test is the existence of such imprisonment or detention, actual though it may not be, as deprives one of the privilege of going when and where he pleases; whether there is actual confinement, or the present means of enforcing it.

Chin Yow v. *U. S.*, 208 U. S. 8;
U. S. v. *Yung Ah Lung*, 124 U. S. 621;

Wales v. *Whitney*, 114 U. S. 564;

U. S. ex rel. Alterie v. *Flint*, 142 Fed. 2d 62, affmg. 54 Fed. Supp. 889;

U. S. ex rel. Jaegeler v. *Ugo Carusi*, Dist. Ct. Philadelphia, case No. M-1213;

U. S. ex rel. Lindenau, v. *Watkins*, South. Dist. Ct. New York case No. Civ. 41-547.

In *Wales* v. *Whitney* it was held that more than moral restraint is necessary to make a case for *habeas corpus;* that there must be actual confinement or the present means of enforcing it. There can be no dispute that respondent has the means at present of terminating Ludecke's parole and again confining him at Ellis Island.

In *Chin Yow* v. *U. S.* involving a Chinese who was refused permission to land in the United States, it was held, even though he was not in the custody of any United States official, that such refusal was a sufficient restraint of the relator's liberty to entitle him to obtain a writ of *habeas corpus.*

In *U. S.* v. *Yung Ah Lung*, also involving a Chinese detained aboard ship by order of the Immigration Authorities, it was urged that the only restraint was that he was not permitted to enter the United States, and that therefore he was not entitled to a writ. The court held that the case was a proper one for the issuing of the writ.

In *U. S. ex rel Alterie* v. *Flint*, a case substantially on all fours with that of Ludecke, it was held that an inductee, though transferred to enlisted reserve to allow time to arrange personal affairs before reporting at Reception Center is subject to the Articles of War and Army orders and hence, and though physically at large, is subject to sufficient restraint to support *habeas corpus.*

The respondent in the *Alterie* case had argued, as he likewise did in the *Jaegler* and *Lindenau* cases, that the relator

"is not actually confined and restrained of his liberty, and that the respondent is without power to produce the body in court."

In *re Foster*, 44 Texas Cr. 359, a lawyer held in contempt was in custody of the sheriff who released him on parole so he could file a *habeas corpus* to test the validity of his detention. It was held that such restraint was sufficient to justify issuance of the writ of *habeas corpus*.

Parole under conditions which prevail in petitioner Ludecke's case are distinctly different from parole granted pursuant to provisions of law upon expiration of sentence, or release on bail in criminal cases. Bail is fixed by a court. Parole of prisoners upon expiration of their sentence is granted by law. Parole in alien enemy cases is granted by respondent, and may be revoked at his whim at any time. Petitioner submits that this is an important distinction and defeats the argument of respondent that the case is moot.

To hold otherwise would permit respondent to capitalize on the present situation and make a travesty of this case. If the Court should sustain respondent's argument that Ludecke's release on parole made the case moot, Respondent could in every alien enemy case release the alien enemy as soon as he obtained a writ of *habeas corpus*, or a writ of certiorari from this Court, and then urge that the writ is moot. Immediately upon the dismissal of the proceeding respondent could then again take petitioner into custody. If the petitioner then again obtains a writ the respondent could once again release him on parole and thus prevent the alien enemy from ever obtaining a decision on the merits.

This Court having granted a writ is entitled to have the issues presented and argued on the merits. Petitioner suggests that respondent by raising the question of whether the case is moot is really seeking to avoid argument on the

merits by raising a technicality over which respondent has sole control, and which respondent was created.

It is true that the cases are numerous in which this Court has held that it will not decide questions which have become moot. But those decisions were based upon the principle that the court is not empowered to decide moot questions, or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it. (*California v. San Pablo RR. Co.*, 149 U. S. 308, 314.)

Petitioner respectfully urges that his release on temporary parole has not made his case moot; that his fate as well as that of more than 170 other alien enemies detained on Ellis Island subject to removal order is involved. Whether petitioner Ludecke is on temporary parole or in actual physical custody, the decision of this Court necessarily will go to the merits of his case which involves the fundamental question of whether respondent can remove a resident alien from the United States without trial or hearing and in denial of the requirement of due process of law. The issues raised in the *Ludecke* case affect his rights and the rights of more than 170 other persons and are so fundamental that by no stretch of the imagination can it be said that the case is moot, because respondent has temporarily released him on parole.

Once a case is before the Court, it must make such disposition of the case as justice requires.

Patterson v. *Alabama*, 294 U. S. 600, 607;
Dorchy v. *Kansas*, 264 U. S. 286, 289.

The issues in the *Ludecke* case are now before this Court. Justice requires that disposition be made on the merits, not evaded on a technicality.

Apart from the fact that the *Baker* case is absolutely and completely different from the *Ludecke* case, also the parole question per se is an entirely different one. The criminal convict *Baker* sentenced with due process of law was semi-free on parole and remained semi-free until the completion of his sentence, when automatically he regained his full freedom even though his certiorari was dismissed as moot; whereas this Petitioner, a law-abiding legally admitted bona fide alien resident, nevertheless a prisoner for already six years and five months, should his case be dismissed as moot, not only will return to prison within a very few days, namely, on May 3, but also face deportation to more misery, maybe even death, in a larger concentration camp that prostrate Germany is today, branded as a "dangerous" animal on top of it—and all this without due process of law. Or should he start all over again with a new writ of *habeas corpus* to reach this Court perhaps within another year's time should he still be alive or not gone crazy meanwhile? Would that solve the problem? Does that make sense to dismiss the case as moot today, only to face the same problem tomorrow? And what about the other internees still rotting at Ellis Island who depend upon the outcome of this case? Further, there is the *Laughlin* case that depends upon the instant case. How to dispose of it, if this one is dismissed as moot? Would that be today's practical interpretation and application of Equal Justice Under Law?

Considering the definite difference between the two cases of *Baker* and *Ludecke*, there must be made a clear distinction, because the end of a temporary parole means to the alien enemy the end of semi-liberty and the return to full imprisonment; whereas the end of a parole means usually to the convict the end of semi-liberty but at the same time return to complete liberty. If the *Ludecke* case is moot, then the *habeas corpus* case of any internee is moot who happens

to be on parole for whatever reason, illness, sudden death in the family, voluntary departure, and so on. Such a concept of law would lead to crazy situations. Here is one for illustration. Supposing Petitioner would have been at Ellis Island when his certiorari was granted; supposing further he would win his case in Court, then all those internees on parole would not be released because their cases had become moot, therefore would have to start individual litigations to also gain their freedom. But what if they could not act as attorneys in person and had no money left to pay the lawyers for new actions? Would that make sense and would that be Equal Justice Under Law?

There is another question involved which calls for an answer. Once the Court grants certiorari to an imprisoned petitioner who has the permission to proceed in *forma pauperis* and act as attorney in person, would it not be self-evident then as a matter of necessity to grant him also parole, so that he as a free agent may have the liberty to do all that he should do to protect the interests of his client who happens to be himself? Only one who like this Petitioner has fought his own case while in prison, knows what it means, how exasperating it is, how impossible it seems! And then, after all the work was done to be cheated of his labor, or so near the goal to see a Great Case in danger of being killed on the grounds of a fabricated technicality! Besides, was there ever a professional lawyer who was paid to fight a case for a client and execute his duties while he was imprisoned?

If the procedure without due process of law adopted by the Department of Justice in the instant case is a violation of established National Law as well as of recognized Natural Law, and indeed there is no doubt that it is, then it is inconceivable that this Honorable, the Supreme Court of the United States, after granting certiorari would dismiss

the case as moot in view of the *Baker* v. *Hunter* precedent because your Petitioner happened to be on parole for a few days—a situation forced upon him by a force majeure as explained above.

Moreover, Petitioner who is but an humble medium of a Higher Power must insist that it is not he but rather the Fundamental American Principle that here stands at the bar, *against* which or *for* which Providence has called upon this August Court to make a clear decision, which must and should not be dodged. For to dismiss this case as moot, at this very stage, would tend to make a travesty of Justice and jeopardize, nay, nullify the very Purpose of the Habeas Corpus Act, a Sacred Right, so dear to the American people, so indispensable to Humanity at large.

In conclusion, summing up—it is inconceivable that the Court, first yielding to a higher impulse when finally granting certiorari in the instant case, after soaring up with wings of the American Eagle to the realm of Magnanimity and Justice suddenly flops to the ground into the mire of red tape, technicalities, and quibbling of subaltern and inferior minds—No, that cannot be, that must not be; Wherefore, Your Petitioner prays that "the question whether the case is moot" be disregarded and dismissed

Respectfully submitted,

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Petitioner,
Attorney in person.

Washington, D. C.
April 26, 1948.